

*Affidavit of Henry S. De Rees.*

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hereby jointly and severally enjoined and restrained pending the hearing and determination upon the return of a rule *nisi* from in any manner or form whatsoever interfering with, assigning, transferring or disposing of, or removing from the jurisdiction of this Court, any property of any kind, character, nature or description whatsoever and wheresoever situate, belonging to the defendants or either of them, or belonging to the said copartnership.

HENRY S. DE REES.

Sworn to before me this  
10th day of March, 1920.

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ANNA G. McCONNELL,  
Notary Public,  
Bronx Co. No. 1.

\* Certificate filed in New York Co. No. 64.

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**232 Exhibits Annexed to Affidavit of Henry S. De Rees.**

**EXHIBIT "A."**

En la Ciudad de Buenos Aires a primero de Noviembre de mil novecientos diez y siete entre los Senores David Costaguta por una parte, y el Senor Henry S. De Rees por la otre, se ha convenido lo siguiente:

**233** 1.—Los Senores David Costaguta & Cia establecen en su propia Casa una Seccion especial que se denominara "Seccion Medias" para la compra y venta de medias en general y demas articulos de punto o cualquier otro region o que de comun acuerdo se convenga explotar, autorizando al Senor De Rees de dirigir la Seccion.

2.—Los Senores David Costaguta & Cia fijarán los creditos y condiciones de venta para la clientela.

**234** 3.—El Senor De Rees durante la estadis en Buenos Aires deberá someter á la aprobaci3n de los Sres David Costaguta & Cia. las disposiciones de compras, mientras cuando se traslade á Norte America ó Europa para efectuar compras, tendre complete liberated de accion, dentro de las sumas que los Senores David Costaguta & Cia fijarán por escrito.

4.—Los gastos que se cargaran á la Seccion seran los que directamente le correspondan por concepto se sueldos á sus empleados, gastos de viales, corretages, cables, telegrams, correo etc. Mientras que los gastos de alquiler, luz, calefaccion, patentes,

sueldos a empleados de contaduría, peones, etc. correrán por cuenta exclusiva de los Senores David Costaguta & Cia.

5.—Al 31 de Octubre de cada año se practicará, un balance y las quitas que se considerará conveniente practicar tanto en las mercaderías que en los créditos se establecerá de común acuerdo entre los Senores David Costaguta & Cia. y el Sr. De Rees. De las utilidades que resulte, se deducirá el seis por ciento (6%) de interés anual sobre el capital que los Senores David Costaguta & Cia hayan suministrado á la Sección y el resto se distribuirá en la proporción siguiente: El cincuenta y cinco por ciento (55%) a los Sres David Costaguta & Cia y el cuarenta y cinco por ciento (45%) al Señor De Rees—Las pérdidas serán soportadas en la misma proporción—El cálculo de los intereses se hará cada seis meses estableciendo una cuenta corriente con los desembolsos y entradas de fondos, y dado el caso que las ganancias del ejercicio no los cubrieran, se pasará el saldo al ejercicio siguiente.

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6.—El Señor De Rees puede retirar mensualmente hasta la suma de Unmil quinientos pesos c/1 (\$1,500. c/1) que se cargará á su cuenta particular.

7.—El Señor De Rees no podrá retirar las utilidades líquidas que le correspondan si no en un cincuenta por ciento (50%) debiendo dejar el resto en depósito en la Casa de los Senores David Costaguta & Cia gozando un interés anual del seis por ciento (6%).

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8.—El Señor De Rees tiene el deber dedicar toda su actividad al servicio de la Seccion, y se obliga a no participar directaments o indirectamente en cualquier otro negocio comercial ni de interesarse de otro asunto ajeno a las Seccion Se conviene entre las partes que la infraccion de parte del Señor De Rees á lo que se establece en el priodo anterior de derecho á los Sres David Costaguta & Cia á no reconocer á favor del Señor De Rees las utilidades que se produjeran durante el chercicio en al cual se ha verificado la infracción.

9.—Para evitar posibles confusiones se hace constar que la "Seccion Medias" no tiene relación alguna con la producción de medias de la fabrica de los Senores David Costaguta & Cia. Llamada "La Tejedora."

10.—Las partes se reservan el derecho de dar por terminado el presente convenio previo aviso de tres meses por carta certificada—Encontrandose susente el Señor De Rees, los Sres David Costaguta & Cia lo avisarán por cable que dirigirán á la ultima direccion indicada por al Señor De Rees.

11.—Tanto los Senores David Costaguta & Cia cuanto el Sr. De Rees al recibir la denuncia del presente convenio podran pedir la liquidación de las mercaderias existentes en casa, en la aduana, en viaje, o en curso de fabricación, perteneciente á la Seccion, obligandose el Sr. De Rees á prestar su cooperación hasta el memento en que se dé por terminada la liquidacion y los Senores David Costaguta & Cia como unicos duenos del negocio



pagaran al Senor De Rees el haber que le corresponda a los plazos que se establecen en el articulo siguiente.

12.—En caso de terminacion de este convenio y que no se aplique el articulo anterior por lo que se refiere ó una eventual liquidacion de les existencias, so practicará un balance observando, por lo que se refiere a quitas, la forma indicada en el articulo 5o y los Senores David Costaguta & Cia se harán cargo del activo y pasivo, paguendo el haber que resulte á favor del Senor De Rees en cuatro cuotas iguales La primera al contado, y las otras á seis, doce y dieciocho meses de plazo, gazando del interes del 6%.

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13.—En caso de fallecimiento del Senor De Rees los Senores David Costaguta & Cia. liquidaran les existencias-dentro del periodo de un ano, á conter desde la fecha del fallecimiento; practicaran un balance y abonarán á los herederos del Senor De Rees el haber que le corresponda, á los plazos que se indican en el articulo anterior. A los herederos se le pagarán tambien los intereses a razon del 6% anual.

Conformes con lo que se establece en los 13 articulos precedentes firman las partes.—Entre lineas "O Europa" y diecioche "Vale—

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Firmados—DAVID COSTAGUTA & CIA.—H. S. De Rees.

Es copia fiel del original redactado en los papeles sellados del corrtte ano de á un peso No. 1,894,884

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*Exhibits to Affidavit of Henry S. De Rees.*

y 5 (habiendo sido habilitado el primero hasta el valor de cien pesos) que queda en poder de los Senores David Costaguta & Cia.

DAVID COSTAGUTA & CO.

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EXHIBIT "B."

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In the City of Buenos Aires, the first of November, One thousand nine hundred and seventeen, between Messrs. David Costaguta, of the one part, and Mr. Henry S. De Rees, of the other, the following has been agreed:

1. Messrs. David Costaguta & Co. establish in their own House a special section which will be called "Hosiery Section," for the purchase and sale of hosiery in general and other articles of knit goods or any other line of goods, which by common accord it is agreed to exploit, authorizing Mr. De Rees to manage the section.

2. Messrs. David Costaguta & Co. will pass on and fix the credits and conditions of sale for the clientele.

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3. Mr. De Rees, during his stay in Buenos Aires shall submit to the approval of Messrs. David Costaguta & Co. the arrangements of purchases, whereas when he goes to North America or Europe to make purchases he shall have complete liberty of action, within the sums which Messrs. David Costaguta & Co. shall fix in writing.

4. The expenses which shall be charged to the Section shall be those which directly belong to it by virtue of salaries to its employees, travelling expenses, brokerage, cables, telegrams, postage, etc., whereas, the expense of rent, light, heating, licenses, salaries of accounting employees, laborers, etc., shall be for the exclusive account of Messrs. David Costaguta & Co.

5. On October 31st of each year a balance shall be struck, and the deductions which it shall be deemed advisable to make in the merchandise as well as in the credits, shall be determined by common accord between Messrs. David Costaguta & Co. and Mr. De Rees. From the resulting profits, there shall be deducted six per cent. (6%) annual interest on the capital which Messrs. David Costaguta & Co. may have supplied to the Section, and the remainder shall be distributed in the following proportion: fifty-five per cent. (55%) to Messrs. David Costaguta & Co. and forty-five per cent. (45%) to Mr. De Rees. The losses shall be borne in the same proportion. The calculation of interest shall be made every six months, an account current being established with the disbursements and receipts of funds, and in case the earnings of the fiscal period do not cover the interest, the balance shall be passed to the following period.

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6. Mr. De Rees may withdraw monthly up to the sum of One thousand Five hundred pesos C/1 (\$1500-C/1) which shall be charged to his personal account.

*Exhibits to Affidavit of Henry S. De Rees.*

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7. Mr. De Rees may withdraw his share of the profits only to the amount of fifty per cent., being under the obligation to leave the balance thereof on deposit with Messrs. David Costaguta & Co., drawing an annual interest of six per cent. (6%).

8. It shall be the duty of Mr. De Rees to devote all his activity to the service of the Section, and he obligates himself not to participate directly or indirectly in any other commercial business, nor to be interested in any other manner foreign to the Section. It is agreed between the parties that the violation by Mr. De Rees of what is provided in the preceding sentence shall entitle Messrs. David Costaguta & Co. to not recognize in favor of Mr. De Rees the profits which are earned during the fiscal period in which the violation has taken place.

9. To avoid possible confusion it is understood that the "Hosiery Section" has no relation whatever with the manufacturing of hosiery of the factory of Messrs. David Costaguta & Co. known as "La Tejedora."

10. The parties reserve the right to terminate the present agreement by giving notice of three months by registered letter. In case Mr. De Rees is absent, Messrs. David Costaguta & Co. will advise him by cable, which they shall address to the last address indicated by Mr. De Rees.

11. Both Messrs. David Costaguta & Co. and Mr. De Rees on receiving the notice of termination of the present contract may request the liquidation of

the merchandise existing in the house, in the Custom-House, in transit, or in course of manufacture, pertaining to this Section, Mr. De Rees obligating himself to give his co-operation up to the moment the liquidation be terminated, and Messrs. David Costaguta & Co. as sole owners of the business shall pay to Mr. De Rees the amount corresponding to him in installments which are established in the following article.

12. In case this agreement is terminated and the preceding article is not applied in so far as it refers to an eventual liquidation of the stock in hand a balance shall be made, observing with regard to deductions the form indicated in Article 5, and Messrs. David Costaguta & Co. shall take charge of the assets and liabilities, paying the amount which results in favor of Mr. De Rees in four equal installments, the first in cash, and the others in installments of six, twelve and eighteen months, with interest at 6%.

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13. In case of the death of Mr. Rees, Messrs. David Costaguta & Co. will liquidate the stock in hand within the period of one year from the date of death; they will make a balance and pay the heirs of Mr. De Rees the amount which belongs to him, in the installments which are indicated in the preceding article. Interest at the rate of 6% annually will be paid also to the heirs.

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Agreeing with what is provided in the preceding 13 articles the parties sign,—the interlined words “or Europe” and “eighteen” being valid,—Signed: David Costaguta & Co. and H. S. De Rees.

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*Exhibits to Affidavit of Henry S. De Rees.*

This is a true copy of the original written on stamped paper of the current year of one peso of No. 1,894,884 and 5 (the tax on the original having been paid up to the value of one hundred pesos) which remains in the possession of David Costaguta & Co.

(Signed) DAVID COSTAGUTA & CO.

## EXHIBIT "C."

DAVID COSTAGUTA & CIA.

Buenos Aires

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Montevideo—Asunción—Valparaiso

New York—Paris

Milan

Buenos Aires, Novembre 1st de 1917.

Suipacha 68-76

Señor

May Señor nuestro

Communicamos á Vd. que por terminación de contrato ha quedado disuelta la sociedad que giraba bajo el rubro de

DAVID COSTAGUTA & CIA.

258 haciendose cargo del activo y pasivo de la misma la neuva firma segun circular a la vuelta.

Saludamos á Vd.' muyalte.

S. S. S.

DAVID COSTAGUTA & CIA.

## EXHIBIT "C."

DAVID COSTAGUTA &amp; CIA.

Buenos Aires

Montevideo—Asunción—Valparaiso

New York—Paris

Milan

Buenos Aires, Novembre 1st de 1917.

Señor

Muy Señor nuestro.

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Refiriendonoz á la circular que antecede, tenemos el agrado de participar á Vd. que segun escritura firmada ante el escribano Don Alberto L. Pombo, hemos constituido una nueva sociedad que girará bajo el rubro de

DAVID COSTAGUTA &amp; CIA.

de la cual forman parte los Señores David Costaguta, Marcos A. Algier, Alejandro Sassoli y Eugenio Ottolenghi, teniendo los cuatro el carácter de socios activos y solidarios é indistintamente el uso de la firma social.

Al mismo tiempo nos es grato comunicar a Vd. que quedan ratificados los poderes generales otorgados a los Señores Orestes Riccio y Carlos F. Frayser y los poderes colectivos que la firma antecesora habia otorgado á sus antiguos colaboradores Señores José Gristelli, Armando Belleno, Tancredo C. Verardo y Hector Desylla, debiendo los tres últimos firmar indistintamente en unión del primero.

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Esperando se sirva, dispensar á la nueva sociedad la misma confianza con que ha sido favorecida la anterior, rogámosle tomar nota de las firmas el pié y saludamos á Vd. con la mayor consideración,

Ss. Ss. Ss.

DAVID COSTAGUTA &amp; CIA.

## EXHIBIT "D."

DAVID COSTAGUTA &amp; CIA.

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Buenos Aires

Montevideo—Asunción—Valparaiso

New York—Paris

Milan

Buenos Aires, November 1, 1917.

Dear Sirs:—

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We herewith communicate to you that owing to termination of the contract, the partnership which has been doing business under the name of David Costaguta & Company is dissolved, and that the new partnership as indicated in the annexed circular on the reverse side of this, has assumed and taken charge of all of the assets and liabilities of the dissolved partnership.

Yours very truly,

S. S. S.

DAVID COSTAGUTA &amp; CO.



## EXHIBIT "D."

DAVID COSTAGUTA & CIA.  
Buenos Aires

Montevideo—Asunción—Valparaiso  
New York—Paris  
Milan

Buenos Aires, November 1st, 1917.

Dear Sirs:—

Referring to the foregoing circular, we take the pleasure of advising you that according to the agreement signed before the Notary Mr. Alberto L. Pombo, we have formed a new copartnership which will do business under the name of DAVID COSTAGUTA & COMPANY and which is composed of Messrs. David Costaguta, Marcos A. Algier, Alejandro Sassoli and Eugenio Ottolenghi, all of whom are full and active partners and indistinctively have the right to use the partnership signature.

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At the same time we take pleasure in advising you of the ratification of the general Powers of Attorney given to Orestes Riccio and Carlos F. Frayser and the collective Powers of attorney which the former firm had given to its old employees Jose Gristelli, Armando Belleno, Tancredo C. Verardo and Hector Desylla, the three last named shall sign separately in union with the former.

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Hoping you will give to the new copartnership the same confidence you did to the former and asking you to take notice of the signatures at the foot hereof, we remain, with most consideration,

DAVID COSTAGUTA & COMPANY.

## EXHIBIT "E."

Enero 31 de 19.  
 Senor H. S. De Rees,  
 Nueva York.

Muy Señor nuestro:

Noe complacemos en remitirle adjunto:

1. Extracto de su cuenta corriente, en nuestra casa, cerrado al 31 de Octubre 1918, con un saldo á su favor de:

m\$ n 1.526.90

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2. Extracto de su "Cuenta deposito obligado," en nuestra casa, cerrado al 31 de Octubre 1918, con un saldo de:

m\$ n 54.735.79

3. Detalle del balance de la Seccion "Medias N. A." al 31 de Octubre 1918. El inventario á esa misma fecha, ya lo hemos remitido á nuestra casa de Nueva York en fecha 7 de Diciembre ppdo. (nuestra carta fol. 375) y con nuestros cables á la misma, de fecha 2 y 15 de Noviembre ppdos. ne habiamos anticipado de darle la existencia aproximada (Doll. 700.000.-) y el detalle de lo disponible, tipo por tipo.

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Por lo que se refiere al extracto de su cuenta corriente, observamosle que hemos llevado á su credito, con caracter provisional, la suma de Doll.9.125.—á que se refiere el telegrama que hemos recibido de n/casa en esa, con fecha 25 de Noviembre ppdo. Esperamos, como nos ha escrito la mencionada casa en fecha 25 de Octubre ppdo., que pronto recibiremos el detalle de esa suma para revisarla.

Sin otro motive, saludamosle cordialmente.

## EXHIBIT "E."

Señor H. S. DE REES

CURETA DEPOSITO OBLIGADO EN LA CASA DAVID COS-  
TAGUTA & CIA. BS. AIRES al 31/10/1918.

	Debe	Haber
	m\$n.	c/1.
1918		
Octubre 31 Traspaso de Cuenta		
Corriente de la mitad de su par-		
ticipación á los beneficios		
del Ejercicio 1917/1918, de		
acuerdo con el contrato		

Valor 31 Octubre 1918

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54.735.79

S. E. ú.

Bs. Aires, Octubre 31 de 1918.

## EXHIBIT "F."

January 31, 1919.

Mr. H. S. De Rees,

New York.

Dear Sir:—

With pleasure we remit attached:

First, extract of your account current in our  
house closed on October 31st, 1918, with a balance  
in your favor of 1,526.90 Argentine pesos m/n.

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Second, extract of your obligatory deposit account  
in our house closed on December 31st, 1918, with  
a balance of 54,735.79 Argentine pesos m/n.

Third, Details of the balance of the N. A. Hosiery  
Section on October 31st, 1918. The inventory on

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*Exhibits to Affidavit of Henry S. De Rees.*

this same date we have already sent to our New York house under date of December 7th (our letter fol. 375) and with our cables to the same dated 2nd and 15th of November, we had given you the approximate stock on hand \$700,000 and the details of the styles on hand, style per style.

As regards your account current take notice that we have credited you provisionally the sum of \$9,125 which is referred to in the telegram which we received from our house there dated November 25th. We hope as the above mentioned house wrote to us under date of October 25th, that we will soon receive the details of this amount to revise it.

With nothing more for the present, we remain—

## EXHIBIT "F."

Mr. H. S. De Rees,

OBLIGATORY DEPOSIT ACCOUNT IN THE HOUSE OF DAVID  
COSTAGUTA & COMPANY, BUENOS AIRES, TO OCTOBER 31ST, 1918.

1918

Debit      Credit  
Argentine Pesos.  
m/n.c/l.

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October 31st, Transferred from  
current account one-half of  
your participation in the  
profits of the fiscal year 1917-  
1918, according to contract  
value October 31, 1918.....  
Buenos Aires, October 31st, 1918.  
Subject to errors or omissions.

54.735.79

*Exhibits to Affidavit of He*

## EXHIBIT "G."

DEBE

## CUENTA SECCION MEDIAS EJ

	m\$n	
Existencia de mercaderias al 1/11/1917	302,333.18	Ven
Derechos de aduana pagados durante el ejercicio	182,201.61	Ven
Caja: varios pases por mercaderias	724,423.37	Pro
American Express Company: pases efectuados por cuenta de la Seccion	301,512.10	
Casa New York: Facturas	1,082,910.35	
Comisiones a los corredores y a los represen- tantes	32,886.09	BAI
Gastos del ejercicio Buenos Aires y New York	57,840.24	
Peridades sobre creditos	3,693.75	
Intereses por el capital adelantado a la Seccion durante el ejercicio	39,745.59	
Reserva a/los creditos de la Seccion al 31/10/ 1918	4,050.95	

## GANANCIA LIQUIDA:

repartida como sigue:

55% a David Costaguta & Cia.	m\$n. 133,798.59	
45% a H. S. De Rees	" 109,471.53	243,270.17
		<u>2,974,866.40</u>

1918  
Noviembre 1

## BALANCE DE ENTRADA:

Existencia mercaderias	m\$n. 1,321,993.26
S. E. u O.	

Buenos Aires, 31 de Octubre de 1918.

*Exhibits to Affidavit of Henry S. De Rees.*

## EXHIBIT "G."

## CUENTA SECCION MEDIAS EJERCICIO 1917/1918.

HABER

	m\$n
Existencia de mercaderias al 1/11/1917	302,333.18
Derechos de aduana pagados durante el ejercicio	182,201.61
Caja: varios pases por mercaderias	724,423.37
American Express Company: pases efectuados por cuenta de la Seccion	301,512.10
Casa New York: Facturas	1,082,910.35
Comisiones a los corredores y a los representantes	32,886.09
Gastos del ejercicio Buenos Aires y New York	57,840.24
Perdidas sobre creditos	3,693.75
Intereses por el capital adelantado a la Seccion durante el ejercicio	39,745.59
Reserva a/los creditos de la Seccion al 31/10/1918	4,050.95

## GANANCIA LIQUIDA:

repartida como sigue:

55% a David Costaguta & Cia.	m\$n. 133,798.59	
45% a H. S. De Rees	" 109,471.58	243,270.17
		<u>2,974,866.40</u>

Ventas neto durante el ejercicio 1917/18	m\$n. 1,584,097.79
Ventas al contado	" 42,104.25
Producto de las Ventas en Chile, Peru y New York, varias diferencias sobre facturas y fletes, y reembolsos faltas	" 26,671.10

## BALANCE DE SALIDA:

Existencia de mercaderias

1,652,873.14

1,321,993.26

2,974,866.40

## BALANCE DE ENTRADA:

Existencia mercaderias	m\$n. 1,321,993.26
S. E. u O.	

Buenos Aires, 31 de Octubre de 1918.

1918

viembre 1

Senor H. S. DE REES (SU CUENTA CORRIENTE con DAVID COSTAGUTA & CIA.—BUENOS AIRES.

		SU CUENTA CERRADA AL 31 OCTUBRE 1918.				DEBE					
		Valor	Dias	Numeros	Importes m\$.c/1			Valor	Dias	Numeros	Importes m\$.c/1
1917							a la vuelta			114.077	31.253.99
Noviembre 1	Importe fact. R. H. Macy & C. (2 Cocinitas electricas) mas fletes, intereses y comision Banco Doll. 53.63 a 97.50 y 44	Octubre 31	365	434	118.85	1917 Noviem. 1	Saldo a su favor, segun cuenta en su poder	Octubre 31	365	114.077	31.253.99
" 20	Nota gastos despacho v/ Russ (2 Cocinitas electricas)	Noviemb. 20	345	72	21.50						
" 5	Alquiler de Octubre	" 5	360	720	200.—						
" 13	N/ entrega	" 13	352	3.520	1.000.—						
" 27	Subscripcion pro Italia	" 27	338	169	50.—						
" "	Abono Union Telefonica	" "	338	101	30.—						
" 28	N/ entrega	" 28	337	3.370	1.000.—						
Diciembre 1	N/ deposito al City Bank	Diciembre 1	334	1.670	500.—						
" 1	N/ giro a la vista a/ New York, Doll. 2.000. a 94.40 y 44	" "	334	14.332	4.290.90						
" 3	Flete equipaje a Chile	" 3	332	258	77.80						
" "	Telegrama a Chile	" "	"	"	.50						
" "	Pasaje a Valparaiso	" "	332		200.95						
" "	N/ entrega: £100.—, —, a 12.10 y \$150. a 2.24	" "	"	5.783	1.546.—						
" 18	Alquiler de Noviembre	" 18	317	634	200.—						
1918		1918									
Enero 3	N/ giro teleg. s/ N. York por intermedio American Express Company \$25.000 a 93.60 y 44	Enero 3	301	160.078	53.181.80						
" 8	Alquiler de Diciembre	" 8	296	592	200.—						
" 12	N/ deposito al City Bank	" 12	292	1.420	500.—						
					193.193	63.118.30					
							a la vuelta				
								114.077		31.253.99	

## Exhibits to Affidavit of Henry S. De Rees.

1918		de la vuelta	1918		193.193	m\$n.c/1 63.118.30	1918		de la vuelta	1918		114.077	m\$n.c/1 31.253.99
Febrero	1	N/ deposito al City Bank	Febrero	1	272	1.360	500.—	Abril 27	Su factura por muestras remitidas por Encomienda Doll. 27.47 a 100 y 44	Abril 27	187	116	62.43
"	8	Alquiler Enero	"	8	265	530	200.—						
"	28	Fact. 26/7/17 The General Fire Cy. 2 gomas entregadasle \$23.91 a 99.70 y 44	1917 Octubre	31	365	197	54.20						
Marzo	1	N/ deposito al City Bank	1918 Marzo	1	244	1.220	500.—						
"	16	Alquiler Febrero	"	16	229	458	200.—						
Abril	1	N/ deposito al City Bank	Abril	1	213	1.065	500.—						
"	18	Alquiler Marzo	"	18	196	392	200.—						
Mayo	1	N/ deposito al City Bank	Mayo	1	183	915	500.—						
"	14	Alquiler Abril	"	14	170	340	200.—						
Junio	1	N/ deposito al City Bank	Junio	1	152	760	500.—						
"	11	Alquiler Mayo	"	11	142	284	200.—						
Julio	1	N/ deposito al City Bank	Julio	1	122	610	500.—						
"	11	Alquiler Junio	"	11	112	224	200.—						
"	13	Error en s/fact. 25/4/18 (carta 13/7/18 a Casa NY. fo. 141) \$87.22 a 100 y 44	Abril	30	184	364	198.22						
"	25	Difer. en s/fact. 25/4/18 (carta 25/7/18 a Casa NY. fo. 170/1) \$164.20 a 100 y 44	"	30	184	686	373.18						
Agosto	5	N/ deposito al City Bank	Agosto	5	87	435	500.—						
"	9	Alquiler de Julio	"	9	83	207	250.—						
Setiem.	5	N/ deposito al City Bank	Setiemb.	5	56	280	500.—						
"	11	Alquiler Agosto	"	11	50	125	250.—						
"	19	Billete Rifa Italiana	"	19	42	42	100.—						
"	23	Pasaje a N. Y. de su Sra.	"	23	38	224	588.85						
"	28	N/ deposito al City Bank	"	28	33	165	500.—						
		a la vuelta			204.076	70.632.75			a la vuelta			114.193	31.316.43



## Exhibits to Affidavit of Henry S. De Rees.

n.c./1	1918	de la vuelta	1918	m\$n.c./1	1918	de la vuelta	1918	m\$n.c./1
353.99			204.076	70.632.75			114.193	31.316.42
62.43	30	Sellos p. contrato sublocacion su de- parto.	Setiembre 30	31	2	7.60		
	9	Alquiler Setiembre	Octubre 9	22	55	250.—		
	25	Telegr. a N. Y. de Setiemb.	" 25	6	..	3.61		
	31	Beneficios en ventas al Chile, segun liquid. 5/10/18 de Casa N.Y.\$7.790.78 a 100 y 44	" 31	..	..	17.706.31		
	"	Beneficios en ventas a Fernandez Hnos. Lima, Segun liquid. de Casa N. Y. 5/10/18 \$577.99 a 100 y 44	" "	..	..	1.313.60		
	"	Intereses 6% s/ balance numeros (89.916)				1.498.60		
	"	Traspaso a su cuenta deposito obligado de acuerdo con el contrato (mitad de su participacion a los beneficios del ejercicio)				54.735.79		
	"	Balance Capitales: SALDO ACREE-DOR				15.552.47		
			204.133	161.700.73			204.133	161.700.73
	1918						Valor	m\$n.c./1
	Noviem.	1 Saldo a su favor menos:					Octubre 31	15.552.47
		Beneficios en ventas en N. York, segun liquidacion 5/10/18 de n/Casa N. Y. \$6.171.25 a 100/44					" "	14.025.57
		Saldo definitivo a s/ fav.						1.526.90
		Bs. Aires, Noviembre 1° de 1918. S. E. & O.						

*Exhibits to Affidavit of Henry S. De Rees.*

## EXHIBIT "J."

Mr. H. S. DE REES YOUR ACCOUNT CURRENT with DAVID COSTAGUTA &amp; COMPANY, BUENOS AIRES.

DEBIT						YOUR ACCOUNT CLOSED ON OCTOBER 31, 1918.						CREDIT								
						As of	Days	Numbers	Amounts							As of	Days	Numbers	Amounts	
						1917			Argentine Pesos	1917							1917			Argentine Pesos
1917						1917			m/n.c/1	1917	Brought forward								114,077	31,253.30
Nov. 1	Amount of bills R. H. Macy & Co. two Electric stoves with freight, interest and bank commissions \$53.63 at 97.50 and 44									Nov. 1	Balance in your favor as per account in your hands									
						Oct. 31	365	434	118.85							Oct. 31	365	114,077	31,253.30	
Nov. 20	Note expenses dispatching two electric stoves					Nov. 20	345	72	21.50											
" 5	Rent for Oct.					" 5	360	720	200.00											
" 13	Cash paid					" 13	352	3,520	1,000.00											
" 27	Subscription to Italy					" 27	338	169	50.00											
" "	Union Telephone					" 27	338	101	30.00											
" 28	Cash paid					" 28	337	3,370	1,000.00											
Dec. 1	Deposited City Bank					Dec. 1	334	1,670	500.00											
" "	Sight draft New York \$2,000 at 94.40 and 44					" "	334	14,332	4,290.90											
" 3	Baggage to Chile					" 3	332	258	77.80											
" 3	Telegram to Chile					" "	"	"	.50											
" "	Passage to Valparaiso					" "	332	"	200.95											
" "	Paid 100¢ at 12.10 and 150 at 2.24					" "	"	5,783	1,546.00											
" 18	Rent for November					" 18	317	634	200.00											
1918						1918														
Jan. 3	Telegraphic draft on New York through American Express Co. \$25,000 at 93.60 and 44					Jan. 3	301	160,078	53,181.80											
" 8	Rent for December					" 8	296	592	200.00											
" 12	Deposit in City Bank					" 12	292	1,460	500.00											
Carried forward								193,193	63,118.30	Carried forward								114,077	31,253.30	

*Exhibits to Affidavit of Henry S. De Rees.*

1918		1918	Argentine Pesos		1918		1918	Argentine Pesos	
			193,193	63,118.30				144,077	31,253.99
	Brought forward					Brought forward			
Feb. 1	Deposited in City Bank	Feb. 1	272	1,360	500.00	Apr. 27	Your bill for samples sent by parcel post \$27.47, at 100 and 44		
" 8	Rent January	" 8	265	530	200.00				
" 28	Bill July 26, 17 General Tire Co. 2 tires \$23.91 at 99.70 and 44	1917 Oct. 31	365	197	54.20	Apr. 27	187	116	62.43
		1918							
Mar. 1	Deposited City Bank	Mar. 1	244	1,220	500.00				
" 16	Rent February	" 16	229	458	200.00				
Apr. 1	Deposited City Bank	Apr. 1	213	1,065	500.00				
" 18	Rent March	" 18	196	392	200.00				
May 1	Deposited City Bank	May 1	183	915	500.00				
" 14	Rent April	" 14	170	340	200.00				
June 1	Deposited City Bank	June 1	152	760	500.00				
" 11	Rent May	" 11	142	284	200.00				
July 1	Deposited City Bank	July 1	122	610	500.00				
" 11	Rent June	" 11	112	224	200.00				
" 13	Error in bill Apr. 25, 18 letter July 13, 18 to N. Y. House fo. 141 \$87.22 at 100 and 44	Apr. 30	184	364	198.22				
" 25	Difference in bill Apr. 25/18 letter July 25/18 to N. Y. House fo. 170/1 \$164.20 at 100 and 44	" 30	184	686	373.18				
Aug. 5	Deposited City Bank	Aug. 5	87	435	5 00				
" 9	Rent July	" 9	83	207	250.00				
Sept. 5	Deposited City Bank	Sept. 5	56	280	500.00				
" 11	Rent August	" 11	50	125	250.00				
" 19	Ticket Italian Rifle	" 19	42	42	100.00				
" 23	Passage to New York of your wife	" 23	38	224	588.85				
" 28	Deposited City Bank	" 28	33	165	500.00				
	Carried forward		204,076	70,632.75		Carried forward		114,193	31,316.42

*Exhibits to Affidavit of Henry S. De Rees.*

1918		1918	Argentine Pesos		1918		1918	Argentine Pesos			
	Brought forward		204,076	70,632.75		Brought forward		114,193	31,316.42		
Sept. 30	Stamps bought changing location department	Sept. 30	31	2	7.60	Oct. 17	Payment from Percy Walter Tinan, rent dept. Cordoba, 612, for the 19 days of October at \$275 per month	Oct. 17	14	24	174.10
Oct. 9	Rent September	" 9	22	55	250.00						
" 25	Telegraph New York Sept.	Oct. 25	6	..	3.61	" 31	Your expenses to Oct.31/18 credited provisionally reserving the revision on arrival of details, \$9,125.00 at 100 & 44	" 31			20,738.63
" 31	Benefits of Sales Chile as liquidation Oct. 5, 1918 of N. Y. House \$7,790.78 at 100 and 44	" 31	..	..	17,706.31	" "	Your share in the profits of the hosiery section	" 31			109,471.58
" "	Benefits in sales to Fernandez Hnos. Lima, as liquidation N.Y.House Oct. 5/18 \$577.99 at 100 and 44	" "	..	..	1,313.60		Balance numbers			89,916	
" "	Interest 6% on balance numbers (89,916)				1,498.60						
" "	Transferred to your obligatory deposit account according to contract, half of your part on profits for fiscal year				54,735.79						
" "	Capital Balance:										
	BALANCE CREDITED				15,552.47						
			204,133	161,700.73				204,133	161,700.73		
						1918				As of	
						Nov. 1	Balance in your favor			Oct. 31	15,552.47
							Less:				
							Profits in New York on sales as per liquidation Oct. 5/18 of our N. Y. house, \$6,171.25 at 100 & 44			" "	14,025.57
							Definite balance your favor				1,526.90
						Buenos Aires, Nov. 1, 1918.					
						Subject to errors and omissions.					

## EXHIBIT "K."

Copy.

November 10, 1919.

David Costaguta & Co.,  
New York and Buenos Aires.

Dear Sirs:

Referring to my letter of August 22nd, 1919, wherein I gave the necessary ninety (90) days' notice of cancellation of contract as per paragraph 10, reserving the right to later state whether I should elect a special balance or liquidation.

302

You will kindly accept this as notice that I have chosen to elect a complete liquidation and am ready to assist with same as per conditions of the contract but with the distinct understanding that on and after November 22nd, 1919, I shall be at liberty to, without infraction of the contract whatsoever, become interested in any other business I see fit. If there is anything to the contrary, I shall expect written notice to the same previous to November 22nd, otherwise it will be understood as above stated.

Please understand in giving notice of the cancellation of the contract, that I leave my very best wishes with the house for its future and will do everything possible towards the complete liquidation of the same, and where I consider any purchases are necessary to assist in the more advantageous liquidation of any and all stock, I shall

303

304

*Exhibits to Affidavit of Henry S. De Rees.*

make said purchases, which will be included in the liquidation.

If for any reason you have any suggestion that you would like to offer, which could make a quicker settlement than the liquidation, I shall be pleased to entertain it.

Yours very truly.

HSD/AG

305

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EXHIBIT "L."

Copy.

New York, 14/11/19

Henry S. De Rees, Esq.,  
22 White Street,  
New York.

Dear Sir:

306

Your letter of the 10th received. We note that you want a liquidation and are glad to note that you are ready to assist in effecting the same. Please permit us to say that we intend to do everything to expedite the liquidation to the end that it may be completed by or as soon after November 22, 1919, as is possible under the circumstances.

We would like if possible to have the liquidation made in such a manner as would be entirely satisfactory to you and accordingly would welcome

any suggestions you care to make as to the manner of making the liquidation.

You have asked whether we agree with your interpretation that on and after November 22, 1919, you may if you see fit engage in any other business either for yourself or for somebody else, we desire to say that our counsel in New York has advised us that in his opinion your interpretation of the contract in this respect is correct, with the qualification however which we think you will accept namely, that on and after November 22, you are obligated to give such time as may be required at Buenos Aires as well as at New York, to promptly complete the liquidation and if necessarily required to give all your time to the exclusion of all other business. In connection with the engagement by you in business either for yourself or for other after the termination of the contract, we wish to say that in our opinion fair dealing requires that before you engage in the hosiery business, the liquidation should be completed, unless of course the liquidation should be necessarily and unjustly delayed or prolonged on our part.

308

In respect to the statement made by you that if you consider it necessary in connection with the liquidation you will purchase hosiery, we desire to state that we do not give you any authority to make such purchases and will refuse to be bound by the same unless of course at some later date we give our consent to the same upon previously being advised of the exigencies which require such purchases to be made, in which event we will give our written consent to you for making such purchases.

309

**310**      *Exhibits to Affidavit of Henry S. De Rees.*

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In conclusion we wish to have it understood that nothing herein stated shall be construed as in any way altering or modifying or waiving any of the terms of the contract, and that any reply made by you to this letter shall be considered sent upon the same understanding.

Very truly yours,

DAVID COSTAGUTA & CO.

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**311**      The foregoing Rule Nisi, affidavit and exhibits thereon are marked filed United States District Court, Southern District of New York, March 10, 1920.

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Endorsed upon the foregoing affidavits and rule nisi is the following:

Motion adjourned to March 29, 1920, at 10.30 A. M.

The injunction now in force will be raised to the extent of allowing the American-European Trading Corporation to use the funds attached for the sole purpose of carrying on its business.

**312**

Mar. 19/20.

LEARNED HAND,  
U. S. D. J.



*Exhibits to Affidavit of Henry S. De Rees.*

313

I HEREBY CERTIFY that on the 10th day of March, 1920, at the City of New York, in my district, I personally served the within order to show cause and affs. upon the within named defendant Renado Taffell by exhibiting to him at #22 White St., N. Y. City, the within originals, and at the same time leaving with him a certified copy of order to show cause and copies of affs. and bill of complaint in this suit.

THOMAS D. MCCARTHY,

United States Marshal,

Southern District of New York. 314

Dated, March 11, 1920.

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I HEREBY CERTIFY that on the 10th day of March, 1920, the City of New York, in my district, I served the within order to show cause and affs. upon the within named defendant David Costaguta and Company by exhibiting to Leon Grumet, as agent and atty. in fact, at #22 White St., N. Y. City, the within originals, and at the same time leaving with him a certified copy of order to show cause and copies of affs. and bill of complaint in this suit.

315

THOMAS D. MCCARTHY,

United States Marshal,

Southern District of New York.

Dated, March 11, 1920.

## 317

**Dated, March 11, 1920.**

318

**Affidavit of Frederick M. Czaki on Ap- 319**  
**plication for Order of Substituted**  
**Service.**

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

HENRY S. DE REES,  
 Plaintiff,

against

DAVID COSTAGUTA and others,  
 Defendants.

320

STATE OF NEW YORK,  
 COUNTY OF NEW YORK, } ss.:  
 SOUTHERN DISTRICT OF NEW YORK, }

FREDERICK M. CZAKI, being duly sworn, deposes  
 and says:

FIRST: That he is a member of the firm of Erwin,  
 Fried and Czaki, who are the solicitors for the plain-  
 tiff in the above-entitled action, with offices at No. 321  
 15 William Street, in the City of New York, Bor-  
 ough of Manhattan.

SECOND: That heretofore and on the 10th day  
 of March, 1920, the above-named plaintiff duly in-  
 stituted the above-entitled action for the purpose of

dissolving the copartnership existing between himself on the one hand and the partnership of David Costaguta & Company on the other, composed of the defendants David Costaguta, Marcos A. Algiers, Alejandro Sassoli and Eugenio Ottolenghi, and for an accounting and liquidation of the property and effects of said copartnership.

THIRD: That on said 10th day of March, 1920, the Subpoena and Bill of Complaint herein were duly served by the United States Marshal upon the defendants Renado Taffell and the American-European Trading Corporation and upon Leon Grumet, as agent and attorney in fact of the said partnership of David Costaguta & Company, composed of the said defendants David Costaguta, Marcos A. Algiers, Alejandro Sassoli and Eugenio Ottolenghi, as appears more particularly by the return of the United States Marshal filed in the office of the Clerk of this Court on the 11th day of March, 1920. That the above-entitled action is brought to enforce an equitable lien or claim to and upon the title to personal property within this District, and the said defendants American-European Trading Corporation, Renado Taffell and the said Leon Grumet were and are in possession of the property of the said copartnership in which the said plaintiff, as a partner, is interested.

FOURTH: That on the 12th day of March, 1920, the United States Marshal duly made his return, filed in the office of the Clerk of this Court, on the 12th day of March, 1920; that after due and dili-

gent search he was unable to find the defendants David Costaguta, Marcos A. Algiers, Alejandro Sassoli and Eugenio Ottolenghi in the Southern District of New York.

FIFTH: That as appears more particularly by the averments of the Bill of Complaint and the affidavit of the plaintiff, duly verified the 10th day of March, 1920, both duly filed in the office of the Clerk of this Court, the defendants David Costaguta and Alejandro Sassoli were and now are citizens and subjects of the Kingdom of Italy and residents of the City of Buenos Aires in the Republic of Argentine. That the defendant Eugenio Ottolenghi was and now is a citizen of the Republic of Argentine, and a resident of the City of Buenos Aires, Argentine Republic, and that the defendant Marcos A. Algiers was and now is a citizen of the Republic of France and a resident of the City of Buenos Aires, Argentine Republic, and that the said David Costaguta, Marcos A. Algiers, Alejandro Sassoli and Eugenio Ottolenghi are not now inhabitants and cannot be found within this District.

326

SIXTH: That as your deponent is informed and verily believes, all of the said defendants, David Costaguta, Marcos A. Algiers, Alejandro Sassoli and Eugenio Ottolenghi, actually reside in the City of Buenos Aires, in the Republic of Argentine, but that deponent has no knowledge or information as to the street and number in said City at which any of the said mentioned defendants reside, but that said defendants compose the firm of David Cos-

327

taguta & Company and are engaged in business in said City of Buenos Aires, Argentine Republic, and have an office and place for the transaction of their business at No. 1382 Calle Alsina in said City.

SEVENTH: That your deponent is further informed and verily believes that one Leon Grumet is the agent and attorney in fact of the said defendants composing the partnership of David Costaguta & Company and that said Leon Grumet is now in the Southern District of New York and engaged in business on behalf of the said defendants David Costaguta & Company at No. 22 White Street, in the City of New York, Borough of Manhattan.

WHEREFORE your deponent respectfully prays this Honorable Court that an order be made and entered herein directing that the said David Costaguta, Marcos A. Algiers, Alejandro Sassoli and Eugenio Ottolenghi appear, plead, answer or demur to said Bill of Complaint by a day certain to be designated in said order, which order shall be served upon each absent defendants, to wit, David Costaguta, Marcos A. Algiers, Alejandro Sassoli and Eugenio Ottolenghi, as follows:

1st. By delivering and leaving a copy of said order, together with a copy of said Bill of Complaint and Subpoena, with the said Leon Grumet personally.

2nd. By mailing a copy of said order, together with a copy of said Subpoena and Bill of Com-

*Affidavit of Frederick M. Czaki.*

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plaint, addressed to David Costaguta & Company, at No. 1382 Calle Alsina, in the City of Buenos Aires, Argentine Republic.

3rd. By publishing a copy of the said order, together with said subpoena, in the Evening Post, a daily newspaper published in the City and County of New York once a week for six successive weeks.

FREDERICK M. CZAKI.

Sworn to before me this  
15th day of March, 1920.

332

ANNA G. McCONNELL,  
Notary Public,  
Bronx Co. #1.  
Cert. filed in New York Co. #64.

333

334

**Order for Substituted Service.**

At a Stated Term of the District Court of the United States, held in and for the Southern District of New York, in the Post Office Building, in the City of New York, Borough of Manhattan, on the 16th day of March, 1920.

Present:

HON. LEARNED HAND,  
*District Judge.*

335

HENRY S. DE REES,  
Plaintiff,  
against

DAVID COSTAGUTA, MARCOS A. ALGIERS, ALEJANDRO SASSOLI, EUGENIO OTTOLENGHI, individually and as copartners in business, composing the copartnership of David Costaguta & Company, Renado Taffell and the American-European Trading Corporation,  
Defendants.

± E-17-201.

336

UPON the Bill of Complaint herein, duly filed in the office of the Clerk of this Court on the 10th day of March, 1920, the Return of the Marshal that the defendants David Costaguta, Marcos A. Algiers, Alejandro Sassoli and Eugenio Ottolenghi cannot, after due and diligent search, be found in this Dis-



*Order for Substituted Service.*

337

trict, and the annexed affidavit of Frederick M. Czaki, verified the 15th day of March, 1920, from which it appears that the above-entitled action is brought to enforce an equitable lien upon or claim to the title to personal property within this District, and that the defendants David Costaguta, Marcos A. Algiers, Alejandro Sassoli and Eugenio Ottolenghi, and each of them, are not now inhabitants of and cannot be found within the Southern District of New York, and that the said defendants, and each of them, reside in the City of Buenos Aires, Argentine Republic, and have an office and place for the transaction of their business at No. 1382 Calle Alsina, in said City of Buenos Aires, it is, on motion of Messrs. Erwin, Fried & Czaki, solicitors for the above-named plaintiff

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ORDERED that the said defendants David Costaguta, Marcos A. Algiers, Alejandro Sassoli and Eugenio Ottolenghi be and they hereby are directed to appear, plead, answer or demur to the Bill of Complaint herein on or before the 28th day of April, 1920; and it is further

ORDERED that a copy of this order, together with a copy of said Bill of Complaint and Subpoena herein, shall be served upon the said David Costaguta, Marcos A. Algiers, Alejandro Sassoli and Eugenio Ottolenghi as follows:

339

1st. By delivering a copy of this order, together with a copy of said Bill of Complaint and Subpoena, to and leaving the same with one Leon Grumet, in

340

*Order for Substituted Service.*

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the City of New York, Borough of Manhattan, Southern District of New York.

2nd. By enclosing a copy of this order, together with a copy of said Bill of Complaint and said Subpoena, in a securely postpaid wrapper, addressed to the said David Costaguta, Marcos A. Algiers, Alejandro Sassoli and Eugenio Ottolenghi at No. 1382 Calle Alsina, in the City of Buenos Aires, Argentine Republic, and depositing the same, duly postpaid, in the United States Mail on or before the 17th day of March, 1920.

341

3rd. That a copy of this order shall be published in the Evening Post, a daily newspaper, published in the City and County of New York, on the 17th, 24th and 31st days of March and the 7th, 14th and 21st days of April, 1920.

LEARNED HAND,  
U. S. D. J.

---

342

The foregoing affidavit and order for substituted service are marked filed United States District Court, Southern District of New York, March 17, 1920.

*Order for Substituted Service.*

343

I HEREBY CERTIFY that on the 19th day of March, 1920, at the City of New York, in my district, I personally served the within affidavit and order upon the within-named Leon Grumet, as agent and attorney in fact for David Costaguta, Marcos A. Algiers, Alejandro Sassoli and Eugenio Ottolenghi, by exhibiting to him at #22 White St., New York City, N. Y., the within originals, and at the same time leaving with him a copy of each thereof, and at the same time and place left with him a copy of bill of complaint and subpoena in equity in this suit.

344

THOMAS D. McCARTHY,  
United States Marshal,  
Southern District of New York.

Dated, March 20, 1920.

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The foregoing return of the Marshal is attached to the order for substituted service.

345

**346      Notice of Special Appearance of Resi-  
dent Defendants.**

IN THE  
DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF NEW YORK.

HENRY S. DE REES,  
Plaintiff,

against

**347      DAVID COSTAGUTA, MARCOS A.  
ALGIERS, ALEJANDRO SASSOLI,  
EUGENIO OTTOLENGHI, individu-  
ally and as copartners in busi-  
ness, composing the copartner-  
ship of David Costaguta &  
Company, Renado Taffell and  
the American-European Trad-  
ing Corporation,  
Defendants.**

**348      PLEASE TAKE NOTICE** that the undersigned hereby  
appear in the above-entitled action for said defend-  
ants Renado Taffell and the American-European  
Trading Corporation specially and solely for the  
purpose of objecting to the jurisdiction of this Court  
and for the purpose of herein opposing the motion  
made on an order to show cause made herein by  
Hon. Learned Hand, District Judge, dated March  
10, 1920, for the appointment of a receiver and for  
an injunction pendente lite, and you will

*Notice of Special Appearance.*

349

PLEASE TAKE NOTICE that the undersigned do not appear for any of the other defendants in said action nor do they appear generally for said defendants Renado Taffell and the American-European Trading Corporation, or either of them, or otherwise than as herein expressly specified.

Dated, New York, March 19, 1920.

Yours, &c.,

ESSELSTYN & HAUGHWOUT,  
Attorneys for defendants Renado Taffell and the American-European Trading Corporation, specially as above indicated. 350

To:

ERWIN, FRIED & CZAKI, Esqs.

The foregoing notice of appearance is marked filed United States District Court, Southern District of New York, March 19, 1920.

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**Notice of Special Appearance of Non-Resident Alien Defendants.**

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

---

HENRY S. DE REES,  
Plaintiff,

353

against

DAVID COSTAGUTA, MARCOS A.  
ALGIERS, ALEJANDRO SASSOLI,  
EUGENIO OTTOLENGHI, individu-  
ally and as copartners in busi-  
ness, composing the partner-  
ship of David Costaguta &  
Company, Renado Taffell and  
the American-European Trad-  
ing Corporation,  
Defendants.

---

} Equity—  
17-201.

354 *Sirs:*

PLEASE TAKE NOTICE that the undersigned hereby appears in the above-entitled action for said defendants David Costaguta, Marcos A. Algiers, Alejandro Sassoli and Eugenio Ottolenghi, individually and

*Notice of Special Appearance.*

355

as copartners in business, composing the copartnership of David Costaguta & Company, specially and solely for the purpose of applying to this Court for an order vacating, quashing and setting aside the alleged services of the subpoena issued herein on the 10th day of March, 1920, alleged by Thomas D. McCarthy, as United States Marshal for the Southern District of New York, to have been made by him on the copartnership of David Costaguta & Company on the 10th day of March, 1920, and on the defendants David Costaguta, Marcos A. Algiers, Alejandro Sassoli and Eugenio Ottolenghi on the 19th day of March, 1920, and also for an order vacating, quashing and setting aside the order made herein by the Honorable Learned Hand, one of the Justices of this Court, dated the 16th day of March, 1920, and filed in the Office of the Clerk of this Court on the 17th day of March, 1920, directing that substituted service herein be made as to the said defendants David Costaguta, Marcos A. Algiers, Alejandro Sassoli and Eugenio Ottolenghi in the manner therein provided; and

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PLEASE TAKE NOTICE that the undersigned does not appear for any of the other defendants in this action nor does he appear generally for the said defendants David Costaguta, Marcos A. Algiers, Alejandro Sassoli and Eugenio Ottolenghi, either as individuals or as such copartners, or either or any

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*Notice of Special Appearance.*

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of them, or otherwise than as herein is expressly specified.

Dated, New York, March 23rd, 1920.

Yours, etc.,

WALTER H. MERRITT,  
Attorney for Defendants David  
Costaguta, Marcos A. Algiers,  
Alejandro Sassoli and Eugenio  
Ottolenghi, appearing specially  
for the purposes hereinbefore  
mentioned and not appearing  
generally in the action,

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54 Wall Street,  
Borough of Manhattan,  
City of New York.

To:

ERWIN, FRIED & CZAKI, Esqrs.,  
Attorneys for Plaintiff,  
15 William Street,  
Borough of Manhattan,  
New York City.

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The foregoing notice of appearance is marked  
filed United States District Court, Southern Dis-  
trict of New York, March 23, 1920.



**Supplemental Special Appearance of      361**  
**Non-resident Alien Defendants.**

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

HENRY S. DE REES,  
 Plaintiff,

against

DAVID COSTAGUTA, MARCOS A.  
 ALGIERS, ALEJANDRO SASSOLI,  
 EUGENIO OTTOLENGHI, individu-  
 ally and as copartners in busi-  
 ness, composing the partner-  
 ship of David Costaguta &  
 Company, Renado Taffell and  
 the American-European Trad-  
 ing Corporation,  
 Defendants.

Equity—  
 17-201.

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*Sirs:*

PLEASE TAKE NOTICE that in addition to the pur-  
 poses for which the said defendants David Costa-  
 guta, Marcos A. Algiers, Alejandro Sassoli and  
 Eugenio Ottolenghi, individually and as copartners  
 in business, composing the copartnership of David  
 Costaguta & Company, appeared specially in and by  
 their special appearance dated and filed in the office  
 of the Clerk of this Court on the 23rd day of March,

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*Second Notice of Special Appearance.*

1920, the said defendants also appear specially for the purpose of opposing the motion made by the plaintiff herein on the order to show cause made by Hon. Learned Hand, one of the Justices of this Court, dated the 10th day of March, 1920, on the ground that this Court has no jurisdiction over the said defendants and has no jurisdiction over the cause of action attempted to be set forth in the bill of complaint filed herein on the 10th day of March, 1920.

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PLEASE TAKE NOTICE FURTHER that the undersigned does not appear for any of the other defendants in this action nor does he appear generally for the said defendants David Costaguta, Marcos A. Algiers, Alejandro Sassoli and Eugenio Ottolenghi, or either or any of them, or otherwise than is specified in the said notice of special appearance dated and filed in the office of the Clerk of this Court on the 23rd day of March, 1920, and as is herein expressly specified.

Dated, New York, March 26, 1920.

Yours, etc.,

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WALTER H. MERRITT,  
Attorney for Defendants David  
Costaguta, Marcos A. Algiers,  
Alejandro Sassoli and Eugenio  
Ottolenghi, appearing specially  
for the purposes hereinbefore  
mentioned and not appearing  
generally in the action,

54 Wall Street,  
Borough of Manhattan,  
New York City.

*Second Notice of Special Appearance.*

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To:

ERWIN, FRIED & CZAKI, Esqs.,  
Attorneys for plaintiff,  
15 William Street,  
Borough of Manhattan,  
New York City.

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The foregoing notice of appearance is marked  
filed United States District Court, Southern Dis-  
trict of New York, March 26, 1920.

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**370 Order to Show Cause Why Service of  
Subpoena and Order for Substituted  
Service Should Not Be Vacated.**

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

HENRY S. DE REES,  
Plaintiff,

against

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DAVID COSTAGUTA, MARCOS A.  
ALGIERS, ALEJANDRO SASSOLI,  
EUGENIO OTTOLENGHI, individu-  
ally and as copartners in busi-  
ness, composing the copartner-  
ship of David Costaguta &  
Company, Renado Taffell and  
the American-European Trad-  
ing Corporation,  
Defendants.

Equity—  
17-201.

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UPON the subpoena issued herein on the 10th day of March, 1920, the Bill of Complaint herein, verified the 10th day of March, 1920, the certificates of Thomas D. McCarthy, United States Marshal for the Southern District of New York, dated the 11th day of March, 1920, wherein he certifies that on the 10th day of March, 1920, at the City of New York, in the Southern District of New York, he served the said subpoena "upon the within defendant and

*Order to Show Cause.*

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David Costaguta Co. by exhibiting to Leon Grumet, as agent and attorney-in-fact, at #22 White St., N. Y. City, the within original, and at the same time leaving with him a copy thereof," the certificate of the said United States Marshal, dated the 20th day of March, 1920, wherein he certifies that on the 19th day of March, 1920, at the City of New York, in the Southern District of New York, he personally served the subpoena "upon the within-named defendants David Costaguta, Marcos A. Algiers, Alejandro Sassoli and Eugenio Ottolenghi by exhibiting to Leon Grumet, as agent and attorney-in-fact for said defts. at #22 White St., N. Y., the within original, and at the same time leaving with him a copy thereof," both of which said certificates are attached to the said subpoena now on file in the Office of the Clerk of this Court, the certificate of said United States Marshal, dated the 10th day of March, 1920, wherein he certifies that after due and diligent search he was unable "to find the within-named David Costaguta, Marcos A. Algiers, Alejandro Sassoli and Eugenio Ottolenghi" in the Southern District of New York upon the notice of special appearance of the said defendants David Costaguta, Marcos A. Algiers, Alejandro Sassoli and Eugenio Ottolenghi, individually and as copartners in business composing the copartnership of David Costaguta & Co., filed in the Office of the Clerk of this Court on the 22nd day of March, 1920, the order made by the Honorable Learned Hand, one of the Justices of this Court, dated the 16th day of March, 1920, and filed in the Office of the Clerk of this Court on the 17th day of March, 1920,

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directing that substituted service be made as to the defendants David Costaguta, Marcos A. Algiers, Alejandro Sassoli and Eugenio Ottolenghi in the manner therein provided, the affidavit of Frederick M. Czaki, verified the 15th day of March, 1920, attached to and upon which the said order was made, and the annexed affidavit of Leon Grumet, verified the 23rd day of March, 1920,

LET the plaintiff above named, or his attorneys, Messrs. Erwin, Fried & Czaki, show cause before this Court at a stated term thereof to be held for the hearing of motions in the United States Post Office Building, in the Borough of Manhattan, City of New York, on the 26th day of March, 1920, at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, WHY an order should not be made and entered in the above-entitled action:

(1) Vacating, quashing and setting aside such alleged services of the said subpoena on the partnership of David Costaguta & Co. and on the defendants David Costaguta, Marcos A. Algiers, Alejandro Sassoli and Eugenio Ottolenghi, and declaring that such alleged services of the said subpoena be null and void. Said motion will be made on the following grounds, among other things: That at the time of the alleged services of the said subpoena the said partnership of David Costaguta & Company and the said defendants David Costaguta, Marcos A. Algiers, Alejandro Sassoli and Eugenio Ottolenghi were not personally served with the said subpoena within the jurisdiction of this Court, were not then

within the jurisdiction of this Court and could not be found therein; that Leon Grumet, on whom the alleged services of the said subpoena were made by the said United States Marshal, was not authorized by David Costaguta & Company and by David Costaguta, Marcos A. Algiers, Alejandro Sassoli and Eugenio Ottolenghi, or by any of them, to accept service of process issued by this Court or by any other Court in behalf of them or any of them; that the entry of a judgment based upon such alleged services of the said subpoena upon said Leon Grumet, as the agent and attorney-in-fact for the partnership of David Costaguta & Company, and for the individual defendants David Costaguta, Marcos A. Algiers, Alejandro Sassoli and Eugenio Ottolenghi, within the jurisdiction of this Court at the times aforesaid, and the enforcement and collection of any judgment founded thereon, would, if permitted by this Court, deprive the partnership of David Costaguta & Company and of the individual defendants David Costaguta, Marcos A. Algiers, Alejandro Sassoli and Eugenio Ottolenghi of property without due process of law.

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(2) Vacating, quashing and setting aside the said order made by the Honorable Learned Hand, dated the 16th day of March, 1920, and filed in the Office of the Clerk of this Court on the 17th day of March, 1920, directing the defendants David Costaguta, Marcos A. Algiers, Alejandro Sassoli and Eugenio Ottolenghi to appear, plead, answer or demur to the said Bill of Complaint on or before the 20th day of April, 1920, on the ground that this action is

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*Order to Show Cause.*

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not an action "to enforce any legal or equitable lien upon or claim to, or to remove any encumbrance or lien or cloud upon the title to real or personal property" within the Southern District of New York and therefore is not an action in which this Court by virtue of the provisions of Section 57 of the Judicial Code is authorized to make an order for substituted service as to necessary parties defendants who cannot be personally served within the jurisdiction of this Court, and on the further ground that it appears from the said Bill of Complaint and the prayer for relief demanded therein that any judgment entered against the said defendants David Costaguta, Marcos A. Algiers, Alejandro Sassoli and Eugenio Ottolenghi must necessarily be a personal judgment *in personam* against said defendants David Costaguta, Marcos A. Algiers, Alejandro Sassoli and Eugenio Ottolenghi which this Court will be powerless to enforce as against said defendants, and on account of that fact lacks jurisdiction as to said Bill of Complaint and the cause of action attempted to be set forth therein.

Service of this Order to Show Cause on the plaintiff or on his attorneys, Messrs. Erwin, Fried & Czaki, on or before March 24th, 1920, shall be sufficient.

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Dated, New York, March 23rd, 1920.

LEARNED HAND,  
U. S. D. J.



**Affidavit of Leon Grumet on Application for Order to Show Cause.** 385

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

HENRY S. DE REES,  
Plaintiff,

against

DAVID COSTAGUTA, MARCOS A.  
ALGIERS, ALEJANDRO SASSOLI,  
EUGENIO OTTOLENGHI, individu-  
ally and as copartners in busi-  
ness, composing the copartner-  
ship of David Costaguta &  
Company, Renado Taffell and  
the American-European Trad-  
ing Corporation.  
Defendants.

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Equity—  
17-201.

UNITED STATES OF AMERICA,  
SOUTHERN DISTRICT OF NEW YORK, } ss.:  
COUNTY OF NEW YORK, }

LEON GRUMET, being duly sworn, says that he is 387  
the Leon Grumet mentioned in that certain cer-  
tificate dated March 11th, 1920, made by Thomas  
D. McCarthy as United States Marshal for the  
Southern District of New York, wherein said United  
States Marshal alleges that on the 10th day of

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*Affidavit of Leon Grumet.*

March, 1920, he made service of the subpoena herein upon the parties therein mentioned. That said certificate reads as follows:

"I HEREBY CERTIFY, that on the 10th day of March, 1920, at the City of New York, in my district, I served the within subpoena in equity upon the within-named defendant and David Costaguta Company by exhibiting to Leon Grumet as agent and attorney-in-fact at #22 White St., N. Y. City, the within original, and at the same time leaving with him a copy thereof.

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THOMAS D. MCCARTHY,  
United States Marshal,  
Southern District of New York.

Dated, March 11th, 1920."

That is the Leon Grumet who is mentioned in that certain certificate dated March 20th, 1920, made by Thomas D. McCarthy, as United States Marshal for the Southern District of New York, wherein said United States Marshal alleges that on the 19th day of March, 1920, he made service of the subpoena herein upon certain defendants therein mentioned. That said certificate reads as follows:

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"I HEREBY CERTIFY, that on the 19th day of March, 1920, at the City of New York, in my district, I personally served the within Subpoena in Equity upon the within-named defendants, David Costaguta, Marcos A. Algiers, Alejandro Sassoli and Eugenio Ottolenghi, by

*Affidavit of Leon Grumet.*

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exhibiting to Leon Grumet as agent and attorney in fact for said defts. at #22 White St., N. Y., the within original, and at the same time leaving with him a copy thereof.

THOMAS D. MCCARTHY,  
United States Marshal,  
Southern District of New York.

Dated, March 20, 1920."

That the defendants David Costaguta, Alejandro Sassoli and Eugenio Ottolenghi are all citizens and inhabitants of the Kingdom of Italy and all actually reside in the City of Buenos Aires, Republic of Argentina, South America; that the defendant Marcos A. Algiers is a citizen and subject of the Republic of France and an actual resident of said City of Buenos Aires; that the said defendants David Costaguta, Marcos A. Algiers, Alejandro Sassoli and Eugenio Ottolenghi constitute the co-partnership of David Costaguta & Company and are engaged in business in the said City of Buenos Aires, where they have their principal office and place of business.

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That on the 17th day of February, 1920, said co-partnership of David Costaguta & Company gave to him a certain Power of Attorney to do certain acts in behalf of said co-partnership, but no authority was given to him in and by said Power of Attorney, or otherwise, to accept service of legal process of this Court or of any other Court in behalf of said co-partnership of David Costaguta & Company or of the individual members constituting

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*Affidavit of Leon Grumet.*

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said co-partnership. That said Power of Attorney states expressly that nothing therein contained shall be construed so as to imply any authority in deponent to accept service of summons or other legal process in any suit brought against the partnership of David Costaguta & Company.

That deponent makes this affidavit solely for the purposes of the attached order to show cause.

That no previous application for this order has been made to any Court or Judge.

LEON GRUMET.

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Sworn to before me this  
23rd day of March, 1920.

EDGAR B. MAGNUS,  
Notary Public,

Kings County, N. Y., No. 212.

Kings County Register's No. 1035.

Certificate filed in New York County, No. 51.

New York County Register's No. 1195.

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The foregoing affidavit and order to show cause are marked filed United States District Court, Southern District of New York, April 7, 1920.

**Affidavit of Leon Grumet Submitted in    397**  
**Opposition to Jurisdiction and Ap-**  
**plication for Receiver and In-**  
**junction.**

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

HENRY S. DE REES,  
 Plaintiff,

against

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DAVID COSTAGUTA, MARCOS A.  
 ALGIER, ALEJANDRO SASSOLI,  
 EUGENIO OTTOLENGHI, indi-  
 vidually and as copartners in  
 business composing the copart-  
 nership of David Costaguta &  
 Company, Renado Taffell and  
 the American-European Trad-  
 ing Corporation,  
 Defendants.

STATE OF NEW YORK, }  
 COUNTY OF NEW YORK, } ss. :

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LEON GRUMET, being duly sworn, deposes and  
 says:

1. That he is and ever since its organization in  
 February, 1920, has been the president of said de-

fendant American-European Trading Corporation; that for a period of about eleven years prior to February 16, 1920, with the exception of the fifty-eight months spent by him in the French Army, he was in the employ of David Costaguta & Company and that he resides in the Borough of Manhattan, City of New York, and makes this affidavit solely on behalf of said defendants American-European Trading Corporation and Renado Taffell.

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2. Upon information and belief denies that in or about the month of April, 1915, or at any other time, said plaintiff entered into a contract of co-partnership with David Costaguta and Marcos A. Algier, who were then doing business under the firm name and style of David Costaguta & Company, as alleged in paragraph "III" of the plaintiff's affidavit, and further denies upon information and belief that by any contract between the plaintiff and the firm of David Costaguta & Company it was provided that a copartnership thereby was established and created, and that the contract referred to in said paragraph provided that the business to be transacted thereunder should be a co-partnership business between said plaintiff and David Costaguta & Company and denies that said plaintiff was to have entire control and direction of the conduct and management of said business and of the purchase and sale of its merchandise or otherwise than as expressly provided in said agreement. Deponent further denies that the terms and conditions of said contract are accurately alleged either in substance or in effect in said plaintiff's affidavit in paragraph "V" thereof, and denies that

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any copartnership between said plaintiff and said David Costaguta & Company ever existed from the month of April, 1915, to and including October 31, 1917, or that the plaintiff was engaged in any business whatever at that or any other times as a copartner with said firm as alleged in paragraph "VI" of plaintiff's affidavit.

3. Deponent further denies upon information and belief that on or about November 1, 1917, or at any other time any contract of copartnership was entered into between said plaintiff and the firm of David Costaguta & Company as the same was reconstituted in or about the month of October, 1917. Deponent alleges that on or about November 1, 1917, said plaintiff did enter into a contract with said firm of David Costaguta & Company, which said firm consisted of David Costaguta, Marcos A. Algier, Alejandro Sassoli and Eugenio Ottolenghi; that said contract was made at Buenos Aires, Argentina, and was written in the Spanish language, and he believes that the copy of said contract in Spanish attached to the moving papers herein is a true copy thereof; deponent denies that "Exhibit B," annexed to the moving affidavits, is a true or accurate translation into English of said contract and alleges that said alleged translation is inaccurate and is not a correct translation of the original; that annexed hereto marked "Exhibit A" is a true and correct translation of said original contract. Deponent further denies that either the substance or effect of said contract of November 1, 1917, is truly or accurately set out in subdivisions "a" to "n," both inclusive, of paragraph "VII" of

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*Affidavit of Leon Grumet.*

the plaintiff's affidavit herein, and refers to the contract itself and to the correct translation thereof, which is hereto annexed marked "Exhibit A."

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4. Deponent denies on information and belief that any copartnership between said plaintiff and the firm of David Costaguta & Company as then reconstituted assumed all or any of the liabilities of any copartnership theretofore existing between said plaintiff and said David Costaguta & Company or that it took over all or any of the assets thereof as alleged in paragraph "IX" of the plaintiff's affidavit, and deponent denies each and every allegation or inference in paragraph "IX" or in any other paragraph of the plaintiff's affidavit contained to the effect that there was a copartnership between said plaintiff and said David Costaguta & Company.

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5. Deponent alleges upon information and belief that said contract dated November 1, 1917, between said plaintiff and said firm of David Costaguta & Company did not and was not intended to constitute a copartnership between said plaintiff and said firm and alleges upon information and belief that no partnership relation has ever existed between said plaintiff and said firm; that the source of deponent's information and the ground of his belief as to the fact that said contract of November 1, 1917, did not constitute or give rise to a partnership between said plaintiff and said firm of David Costaguta & Company, are, among other things, as hereinafter alleged, the annexed affidavit of Dr. M. Garza-Aldapa, verified March 26th, 1920.



*Affidavit of Leon Grumet.*

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Deponent is advised and verily believes that the parties to said contract have, since the making thereof, by their own actions, placed an interpretation upon said contract which is wholly inconsistent with the claim that such contract constituted or was intended to constitute a copartnership between said plaintiff and said firm of David Costaguta & Company.

6. That said firm of David Costaguta & Company is a very large commercial house located in Buenos Aires, Argentina, and that it does a very large and extensive business not only in Argentina, but throughout the world; that the business of said firm is of a most varied and diversified character and consists among other things in the buying and selling of practically all kinds of merchandise, including cotton, cotton goods, hides, leathers, chemicals, foodstuffs, gasoline, silks, hosiery, hardware, &c., &c.; that said firm has a large invested capital upwards of 4,000,000 Argentina pesos, paper; that under the business establishment of said firm it has numerous departments or sections for handling the various classes of commodities in which said firm deals; that said departments or sections, however, are all part and parcel of the one general business of said firm, and said firm keeps only one general set of books in which the accounts of all its transactions are entered and no effort is made to segregate the funds in its general bank accounts derived from or connected with the business of the several departments or sections; that the general books of account of said firm covering all its transactions are and at all times have been kept at

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Buenos Aires, Argentina; that there are kept at the various agencies of said firm local books of account in which are entered the transactions which pass through said several agencies and that prior to December 27, 1917, when said plaintiff came to this country, all the business that said plaintiff had transacted for said firm in this country was transacted directly through the home office in Buenos Aires, Argentina. That one of the departments of the business of said firm of David Costaguta & Company was the hosiery business which was transacted under the heading of the "Hosiery Section," of which said plaintiff had the immediate direction; that said department in no sense constituted a separate or distinct business in the sense that it was segregated from the other general business of said firm; that no effort was ever made to keep the funds derived from or connected with the business of the hosiery section separate from the other general funds of said firm; that no separate set of books was kept for said hosiery section, although a separate memorandum account was kept showing the aggregate amount of business passing through said hosiery section, but neither in this respect or in any other respect was the business passing through said so-called section treated as distinct or separate from the general business of said firm.

7. Deponent further says upon information and belief that when said plaintiff came to this country in December, 1917, he came for the express purpose of buying hosiery for said firm and shipping the same to Argentina for sale there and in other South American countries; that said plaintiff did

*Affidavit of Leon Grumet.*

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not come to this country with an expectation or intention of staying here or of opening a permanent agency for said firm of David Costaguta & Company here, but came on a temporary business trip with the expectation of returning within a month or two to Buenos Aires, Argentina, where the main business of the firm, including the hosiery section, was transacted and where, as general manager of the hosiery section, he was to superintend the sale of the hosiery purchased by him in the United States. That on or about the 19th of February, 1918, said plaintiff sent a cablegram to the firm at Buenos Aires in which, among other things, he said:

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"Conditions prohibit leaving before month more. Notify wife."

That on or about February 21, 1918, said David Costaguta & Company wrote to said plaintiff acknowledging receipt of said cablegram and saying, among other things:

"About your sailing from New York we have cabled you today in order that you await this letter of ours before leaving for here (Buenos Aires). We have done this because next month probably at the middle of March one of our employees will sail for there (New York) who will settle down in that town to look after any of our business in general \* \* \* in representing our house and will also take care there (New York) of everything referring to existing contracts for hosiery, looking after shipments, etc. \* \* \*"

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*Affidavit of Leon Grumet.*

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That the representative of said David Costaguta & Company referred to in said letter as coming to New York to open a branch office in New York was Giuseppe Brugnago. That in a letter written by said firm to said plaintiff dated March 9, 1918, it was said among other things:

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"Mr. Brugnago brings with him our instructions for everything relating to the program which our new branch office will develop. Regarding the hosiery we will thank you to inform him respecting all operations in course and generally of all pending matters in order that he may follow them with full knowledge after your departure."

That on February 13, 1918, said firm of David Costaguta & Company cabled to said plaintiff as follows:

"Telegraph when you will approximately return."

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Upon information and belief said plaintiff has at all times transacted said business of the hosiery section, not by virtue of any relationship of copartnership with the firm of David Costaguta & Company, but by virtue of authority conferred upon him by said firm. That said firm of David Costaguta & Company, among other things, executed and delivered to him an express written power of attorney authorizing him to bring suits in the name of said firm of David Costaguta & Company and in the exercise of the authority conferred by said written power of attorney he did institute suits on be-

half of said firm of David Costaguta & Company. That when he came to this country to purchase hosiery his authority was expressly limited to the purchase of not exceeding \$500,000 worth; that annexed hereto and marked "Exhibit B" is a copy of an original letter of instructions given to said plaintiff before he left Buenos Aires and that hereto annexed, marked "Exhibit D," is an English translation of said letter. That on or about January 2, 1918, said firm sent a cable to said plaintiff, a copy of which is hereto annexed, marked "Exhibit E," together with an English translation thereof marked "Exhibit F," restricting his authority to purchase hosiery to \$250,000.

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8. That in or about the month of 1918, said plaintiff, on behalf of said firm of David Costaguta & Company, entered into a contract with F. Y. Kitzmiller, trading as Frank Y. Kitzmiller Trading Company, wherein and whereby said Kitzmiller agreed to manufacture and deliver to said firm 15,000 dozen hose; that thereafter said Kitzmiller defaulted upon his said contract and said plaintiff, on behalf of said firm of David Costaguta & Company, caused to be instituted in the Court of Common Pleas, Berks County, Pennsylvania, an action by said firm against said Kitzmiller to recover damages for the breach of said contract; that in said action said plaintiff, H. S. De Rees, was not named as one of the parties plaintiff, although he himself verified the bill of complaint therein; that annexed hereto and marked "Exhibit G" is a copy of the verified bill of complaint filed in said action, from which it appears that said De Rees swore that

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the partnership of David Costaguta & Company, which was one of the parties to said hosiery contract, was composed of David Costaguta, Marcos A. Algier, Alejandro Sassoli and Eugenio Ottolenghi, and that he did not claim in said complaint to be one of the partners or a copartner with said firm or a necessary party to said action.

9. Upon information and belief that never since the first contract of April, 1915, was made between said plaintiff and said firm of David Costaguta & Company did said plaintiff sign or endorse checks or promissory notes in connection with the business of said hosiery section nor did he sign the name of David Costaguta & Company as a partner, but always with the addition, "by H. S. De Rees"; that the bulk of the business of the hosiery section of said firm of David Costaguta & Company has always been transacted at Buenos Aires, Argentina, and that although the hosiery section business transacted by said plaintiff in the United States during the year 1919 was of considerable extent, it was only a fractional part of the total hosiery business of said firm; that during the year ending October 31, 1919, the total hosiery business transacted by said firm in Buenos Aires was 1,800,000 Argentina pesos, equivalent to \$810,000; that on

October 31, 1919, the value of the hosiery owned by said firm in its hosiery department in Buenos Aires was approximately 725,000 Argentina pesos, equivalent to approximately \$325,000, while the value of the hosiery in the United States in its hosiery department was approximately \$115,000.

10. That when said plaintiff came to the United States it was not the purpose or plan either of himself or of said firm of David Costaguta & Company that he should sell any hosiery in the United States at all, but his sole purpose in coming here was to purchase hosiery for sale in South America; that he, however, in violation of his authority, bought much more than he was authorized to buy and as a result thereof and also as a result of there being an extensive dock strike in Buenos Aires, he was forced to sell in the United States considerable part of what he had purchased here.

11. Deponent denies that there is now in the custody of said defendant American-European Trading Corporation, in New York City, twenty-two cases of merchandise, consisting of hosiery the property of said alleged copartnership of the value of \$15,000 and which were transferred to it by said firm of David Costaguta & Company, and, on the contrary, deponent alleges that no hosiery whatever was transferred by David Costaguta & Company to said defendant the American-European Trading Corporation, and said company now owns no hosiery at all. Deponent further alleges that the only hosiery owned by said firm of David Costaguta & Company in the United States at the present time consists of about eleven cases located in New York City and which are of the approximate value of \$10,430, not including three cases which had been sold to a customer in Havana, which were about to be shipped when the injunction herein was served. Deponent further denies that all the accounts outstanding due for the sale of hosiery by

said firm of David Costaguta & Company were transferred to said defendant American-European Trading Corporation, but, on the contrary, alleges that said firm sold for a valuable consideration and transferred to said corporation only three accounts, to wit: Weill, Feinberg Co., Inc., Metals and Chemicals Corporation and Cross Hermanos; that the facts in connection with the transfer of these accounts will be fully hereinafter set forth. That, aside from the eleven cases of hosiery above mentioned and certain accounts receivable and unfilled contracts which are still owned by said firm of David Costaguta & Company in connection with the hosiery section business said firm has no other assets whatever in the United States derived from or connected with said hosiery section. Upon information and belief said firm, however, has in Buenos Aires large quantities of hosiery which it owned or had under contract prior to November 22, 1919, and which must be liquidated before the accounts between said plaintiff and said firm can be finally adjusted. That ever since said plaintiff served his notice terminating the contract of November 1, 1917, said firm of David Costaguta & Company has been ready and willing at all times to have said business liquidated as speedily as possible and the accounts adjusted between them. That to that end they have repeatedly requested and urged said plaintiff to go to Buenos Aires, Argentina, and that about the latter part of November, 1919, the firm offered to arrange for and pay all the expenses of his trip to Buenos Aires. That said plaintiff repeatedly assured said firm that it was his expectation and intention to return to Buenos



*Affidavit of Leon Grumet.*

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Aires to complete the liquidation of said hosiery business and to assist in the winding up of the business under said contract of November 1, 1917. That on November 19, 1919, said firm wrote said plaintiff as follows:

"On the 17th instant Mr. Ottolenghi received a cable from David Costaguta & Company at Buenos Aires, reading as follows:

'Regarding termination of contract by De Rees indispensable De Rees to be present.'

In other words in the opinion of the head office of David Costaguta & Company it is absolutely necessary that you go to Buenos Aires at once in connection with the termination of the contract and the settlement to be made thereunder. You will please consider this letter as a request made on you by the head office at Buenos Aires to immediately go to Buenos Aires for the purpose of assisting in making the settlement."

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That on December 3, 1919, Mr. Ottolenghi, one of the members of the firm of David Costaguta & Company, who was then in New York, wrote to said plaintiff as follows:

"We understand that what you have to say in your letter of the 1st instant is to be construed by us as a refusal by you to comply with the request of our Buenos Aires Office that you go immediately to Buenos Aires. In this connection permit us to say that since writing our letter of the 19th ultimo we have received

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a further cable from Buenos Aires stating that your immediate presence in Buenos Aires is absolutely indispensable. Accordingly we urge upon you again the importance of going to Buenos Aires at once."

In a letter written by said plaintiff to said firm of David Costaguta & Company, dated December 9, 1919, he said among other things:

"Regarding my letter of the first being a refusal to go to Buenos Aires will say that this is absolutely erroneous on your part; as soon as the liquidation is completed in New York and I can get away it is my intention to go to Buenos Aires and finish the liquidation there not only of the merchandise but of the account. Regarding the importance of going to Buenos Aires there is no doubt that I understand this better than the parties writing the letter."

On December 11, 1919, Mr. Ottolenghi, on behalf of David Costaguta & Company, again wrote to said plaintiff as follows:

"We note that you intend to go to Buenos Aires as soon as the liquidation here is completed. As you know Buenos Aires has cabled that all hosiery which cannot be disposed of by the time Mr. Ottolenghi leaves for Buenos Aires should be shipped to Buenos Aires. Mr. Ottolenghi wishes to sail on the 27th instant and in accordance with the request of Buenos Aires intends on December 20th 1919 to ship

to Buenos Aires such hosiery as shall not be then disposed of. If you could plan to go to Buenos Aires with Mr. Ottolenghi on the 27th instant it would please both Mr. Ottolenghi and Buenos Aires. \* \* \* Mr. Ottolenghi also wishes to have the power of attorney held by you given to him for cancellation before he sails. Inasmuch as any hosiery not disposed of by December 20th, 1919, is to be shipped to Buenos Aires pursuant to orders from Buenos Aires we cannot see what further need you would have of the power of attorney after that date."

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That said plaintiff in a letter December 11, 1919, replying to said last-mentioned letter, made no objection whatever to the proposed shipment to Buenos Aires of the remainder of the hosiery in New York which was not sold on or before December 20, 1919. In the month of January, 1920, Mr. De Rees stated to deponent that it was still his intention of going to Buenos Aires. On February 17, 1919, Mr. De Rees told deponent that it had always been his intention of going to Buenos Aires and that he had engaged passage on every boat going to Buenos Aires for some time prior thereto, but had cancelled his engagement on each sailing, renewing his engagement for the next boat. That except that in a few relatively unimportant instances all the purchases of hosiery made by said plaintiff were made in the name and for the account of David Costaguta & Company.

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12. Upon information and belief that the books of said David Costaguta & Company at Buenos Aires have at all times been open to the inspection and examination of said plaintiff and the only reason he has not seen them since leaving Buenos Aires in November, 1917, is because he has not been willing to return to Buenos Aires where he could examine the same. Upon information and belief deponent denies that said firm has refused to furnish said plaintiff with daily statements evidencing the detailed reports of the sales made by said hosiery section and denies that said firm has refused to furnish said plaintiff with details of such sales or has refused to furnish said plaintiff with a semi-annual account current and denies that since November 1, 1918, said plaintiff has not received from said firm or from any other source any knowledge or information as to the details of the fiscal account of transactions of said hosiery section otherwise than as set forth in the moving affidavit and alleges upon information and belief that said firm has at all times furnished said plaintiff detailed statements of all of said transactions.

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13. Deponent denies that said plaintiff purchased any merchandise in the United States between November 1, 1917, and November 31, 1918, on behalf of any alleged copartnership between him and said David Costaguta & Company, as alleged in paragraph "XII" of the plaintiff's affidavit, and although said firm of David Costaguta & Company did send numerous statements of account relating to the business of its hosiery section to said plain-

*Affidavit of Leon Grumet.*

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tiff, deponent denies any knowledge or information sufficient to form a belief as to whether the statements annexed to the moving papers, marked Exhibits "G," "H," "I" and "J," are correct copies or translations of any of said statements. Deponent denies that if said statements, Exhibits "G" and "I," annexed to the moving papers, are correct copies of statements sent to said plaintiff, they related to the transactions of any copartnership between said plaintiff and said firm of David Costaguta & Company. Upon information and belief, that during the period referred to in paragraph "XIII" of the plaintiff's affidavit said firm of David Costaguta & Company furnished frequent detailed statements of the business of said hosiery section to said plaintiff.

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14. Denies that said plaintiff opened an office at No. 395 Broadway or at No. 22 White Street, New York City, for the business of any copartnership between himself and said firm of David Costaguta & Company or that said plaintiff either purchased or sold or stored any merchandise for and on behalf of any such copartnership and alleges that the offices referred to were opened and the merchandise referred to was purchased or sold or stored by said plaintiff for and on account of said hosiery section, but deponent denies that on October 31, 1919, there was on hand merchandise of the value of \$750,000 and alleges that the merchandise belonging to said hosiery section which was on hand at that time did not exceed the value of approximately \$100,000. Deponent denies that the merchandise sold by said

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plaintiff in New York City was sold or that the proceeds thereof were received for the benefit of, or that any merchandise was shipped to, any copartnership between said plaintiff and said firm of David Costaguta & Company, as alleged in paragraph "XV" of the plaintiff's affidavit.

15. Deponent denies that said firm of David Costaguta & Company invested said Giuseppe Brugnago with authority to supersede and displace said plaintiff in the active management of the business of the hosiery section contrary to the contract between said plaintiff and said firm, as alleged in paragraph "XVI" of the plaintiff's affidavit, or that said Brugnago did hamper or impede said plaintiff in said business. Deponent denies that said Brugnago or anyone else opened any books of account for any copartnership between said plaintiff and said firm of David Costaguta & Company, as alleged in paragraph "XVI," or that said Brugnago was discharged and left the employ of any such copartnership. Deponent further alleges that said Brugnago was sent to the United States by the firm of David Costaguta & Company for the purpose of establishing an agency in New York for the general business of said David Costaguta & Company, it being the purpose and plan that the hosiery business of said firm transacted in the United States should be taken care of by said general agency as a part of the general business of said firm in order that said plaintiff might return to Buenos Aires and there resume his general management of the hosiery section as had been originally contemplated.

16. Upon information and belief deponent denies that Eugenio Ottolenghi told said plaintiff that David Costaguta & Company had invested more capital than it wished or any capital in the business of any copartnership between him and said firm or that the merchandise then on hand should be sold regardless of the prices realized thereon and denies that said Ottolenghi sold large quantities of said merchandise below cost or at large losses to any such copartnership or otherwise, as alleged in paragraph "XVII" of the plaintiff's affidavit, and denies each and every allegation of or reference to the existence or operations of any copartnership between said plaintiff and said firm of David Costaguta & Company as contained in paragraph "XVII" of the plaintiff's affidavit.

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17. Answering the allegations in paragraph "XVIII" deponent alleges upon information and belief that said firm of David Costaguta & Company rendered frequent detailed statements to said plaintiff of the transactions of the entire hosiery department for the year November 1, 1918, to October 31, 1919.

18. Deponent denies each and every allegation or reference in paragraphs "XIX" and "XX" of the plaintiff's affidavit of the existence or operations of any copartnership between said plaintiff and said firm of David Costaguta & Company and denies that said Ottolenghi during the time he was in New York City did anything improper or unlawful or in violation of said plaintiff's rights in connec-

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tion with said hosiery business as alleged in said paragraph "XX" of his affidavit.

19. Deponent denies that said David Costaguta & Company objected to said plaintiff selling any of the hosiery on hand, as alleged in paragraph "XXI" of the plaintiff's affidavit, and denies that large quantities of it were sold at little or no profit or at a loss or below the market value.

20. Deponent denies each and every allegation contained in paragraph "XXII" of the plaintiff's affidavit and alleges that whatever funds were on deposit in the name of David Costaguta & Company in any bank in New York or New Jersey between February 1, 1919, and February 1, 1920, belonged to said firm of David Costaguta & Company and not to any copartnership between said firm and said plaintiff.

21. That in paragraphs "XXIII" and "XXIV" of the plaintiff's affidavit he attempts to make it appear that there was a distinction or separation between the funds in the bank accounts of David Costaguta & Company in New York belonging to the hosiery business on the one hand and those belonging to the other or general business of said firm on the other hand, and the attempt is made to make it appear that said funds were improperly commingled and that said firm improperly used such commingled funds for the purpose of paying the claims of various creditors in connection with the sale to them by said firm of David Costaguta &



Company of certain hides which had no connection with or relation to the hosiery business of said firm and which said creditors had levied attachments upon all the property of said David Costaguta & Company, including the property belonging to or connected with the hosiery section. That the facts in reference to said hides are as follows: They were purchased by the firm of David Costaguta & Company in South America and were shipped to New York by said firm; that the purchase and shipment of said hides had nothing whatever to do with the hosiery section of the business of said firm; that when said hides were rejected by the purchasers and when said purchasers thereafter instituted suits to recover the purchase price and levied attachments upon a large part of the property of said David Costaguta & Company, including said hides, said firm of David Costaguta & Company remitted from Buenos Aires to its agency in New York \$130,000, which money was deposited in the Trust Company of New Jersey; that said sum of \$130,000 was deposited in said account for the express purpose of being used in raising such attachments and it was in fact so used. In this connection deponent denies that there were any monies deposited in any of the bank accounts referred to in the moving affidavit to the credit of any copartnership between said firm of David Costaguta & Company and plaintiff, or that there was any merchandise or property belonging to such a copartnership or that there was any such copartnership, as alleged in paragraphs "XXIII" and "XXIV" of the moving affidavit, or that there was

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*Affidavit of Leon Grumet.*

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any improper commingling of funds connected with the hosiery section with other funds belonging to David Costaguta & Company and alleges that never since the inception of the hosiery business as a branch of the general business of said David Costaguta & Company was there ever any attempt made, nor was there ever any demand or request made by said plaintiff that there should be any effort made, to keep the monies derived from or connected with the hosiery business separate from the other general funds of David Costaguta & Company. Deponent further alleges that all the funds in all of said bank accounts were the sole and absolute property of David Costaguta & Company.

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22. Deponent denies absolutely that in the month of January, 1920, or at any other time said firm of David Costaguta & Company conceived or put into effect any fraudulent scheme of transferring its assets for the purpose of injuring said plaintiff and to prevent him from collecting any sums justly due to him from the firm of David Costaguta & Company, as alleged in paragraph "XXV" of the plaintiff's affidavit, or otherwise; that the facts and circumstances with reference to the incorporation of said defendant American-European Trading Corporation are as follows: The business of David Costaguta & Company, including the hosiery business, which had been transacted in the United States had been transacted in the name of the firm, the members of which were non-residents. As such non-residents the assets of said firm were subject to attachments in all litigations instituted in New

*Affidavit of Leon Grumet.*

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York against said firm or its members; that in the month of December, 1919, attachment proceedings involving large amounts were instituted against said firm and large quantities of the assets of said firm were levied upon and seized by the sheriff of New York County in said proceedings. In addition to the attachment proceedings which were actually commenced against said firm, Gaston, Williams & Wigmore threatened about the same time to institute an attachment proceeding to recover a large claim of over \$70,000. That as a result of the attachment proceedings which were instituted said firm of David Costaguta & Company were subjected to heavy expense and very great inconvenience and realized that its said business was being transacted at a great disadvantage as a result of all of the members of said firm being non-residents. It was thereupon decided under advice of counsel that it was desirable to organize in New York a corporation through which said firm of David Costaguta & Company could transact business in the United States. Thereupon the defendant American-European Trading Corporation was incorporated under the laws of the State of New York with a capital of \$10,000 and deponent denies that said corporation was organized in pursuance of a fraudulent scheme or conspiracy. That the stock of said company was issued to and is held by the individual members of the firm of David Costaguta & Company in the proportion in which said members are interested in the firm of David Costaguta & Company. Deponent denies that said stock was issued without consideration or in consideration of the

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*Affidavit of Leon Grumet.*

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transfer to the corporation of the assets and accounts of the firm of David Costaguta & Company and alleges on the contrary that said stock was paid for in cash, \$10,000 being paid into the treasury of said company at the time of the issuance of said stock. Deponent denies that all the property, merchandise, assets and funds and cash in hand and in the banks belonging to the firm of David Costaguta & Company were transferred, conveyed and set over to said corporation and denies that such transfers as were made were made without consideration or in consideration of the issuance of the capital stock of said company. On the contrary, deponent alleges that the firm of David Costaguta & Company sold to said corporation certain office furniture, including tables, chairs, &c., at the premises No. 22 White Street for \$1639.37, which said sum was paid by the corporation to the firm of David Costaguta & Company in cash; that said firm of David Costaguta & Company also sold and transferred to said corporation three separate accounts receivable, to wit, Weill, Feinberg Co., Inc., Metals & Chemicals, Inc., and Cross Hermanos, Ltd., aggregating \$57,953.04, for the face amount of said accounts said corporation delivered to said firm of David Costaguta & Company its promissory note for said sum. That no other accounts have been sold or assigned by said firm to said corporation. That said firm of David Costaguta & Company also sold and transferred to said corporation by bill of sale all the hides owned by said firm in New York and which had an aggregate value of \$91,290.62 and said corporation executed and de-

livered to said firm in payment for said hides its promissory note in said sum. That said firm of David Costaguta & Company also assigned to said corporation the lease of the premises No. 22 White Street for the nominal consideration of \$10 and in consideration of said corporation assuming the payment of the rent under said lease. That except as herein stated said firm of David Costaguta & Company has not made any other transfers or sold any other property to said corporation. That the property which was transferred and sold to the corporation was the absolute property of the firm of David Costaguta & Company and said plaintiff had no specific interest in or lien upon said property. Deponent denies that said firm of David Costaguta & Company has transferred, set over or paid to said defendant American-European Trading Corporation any hosiery whatever. Deponent denies that there was or is any property in New York or elsewhere belonging to, or that there were or are any accounts outstanding due for the sale of hosiery made by, any copartnership between said plaintiff and said firm of David Costaguta & Company, as alleged in paragraph "XXVIII" of the plaintiff's affidavit.

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23. With reference to the allegations contained in paragraphs "XXIX" and "XXX" of the plaintiff's affidavit deponent alleges upon information and belief that said plaintiff in the early part of January, 1920, stated positively that he would under no circumstances have any further personal dealing with Eugenio Ottolenghi, a member of the firm of David Costaguta & Company, who was then

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in New York, and that thereafter he would transact all his business with the head office of said firm at Buenos Aires, and deponent is informed and believes that there was no reason why said Ottolenghi should communicate to said plaintiff in advance any information about any of his movements. Depo-  
nent denies each and every allegation or inference in said paragraph as to the existence of any copartnership between said plaintiff and said firm of David Costaguta & Company and deponent denies that said Ottolenghi caused to be sent out any notices to anyone that any copartnership between said  
473 plaintiff and the firm of David Costaguta & Company had ceased doing business.

24. With reference to the Weill, Feinberg Co., Inc., transaction, referred to in paragraph "XXV" of the plaintiff's affidavit, deponent alleges upon information and belief that said transaction is a glaring instance of bad faith on the part of said plaintiff; that his real purpose and intention in connection with said transaction were not at all as he pretends to set forth in his bill of complaint and in his moving affidavit. That the only reason why said transaction is mentioned in said bill of complaint and affidavit is that he wishes to explain away an improper and fraudulent transaction.  
474 That the real facts with reference to said transaction are as follows: In or about the middle of January, 1920, after the plaintiff had made the sales of hosiery, covered by invoices Nos. 7, 17-a, 18 and 19, to Weill, Feinberg Co., Inc., as set out in schedule "A" annexed to the bill of complaint herein,

*Affidavit of Leon Grumet.*

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said Eugenio Ottolenghi became suspicious as to the bona fides of said sales on account of the fact that they were made at prices approximately 30% less than the market prices for the same hosiery in New York. Thereupon he caused Mr. W. H. Merritt, counsel for said firm of David Costaguta & Company, to notify the plaintiff of the existence of such suspicion and to advise him that the hosiery could be sold at Buenos Aires for prices far in excess of the prices of the pretended sales to Weill, Feinberg Co., Inc. On information and belief that instead of claiming that said sales had not been consummated, as now alleged in the bill of complaint, said plaintiff stoutly maintained that said sales were absolutely bona fide and that he would not consent to the hosiery being shipped to Buenos Aires, there to be sold, and that if for any reason the hosiery was not delivered to Weill, Feinberg Co., Inc., the latter would undoubtedly bring heavy suits for damages against the firm of David Costaguta & Company. On the 17th day of February, 1920, deponent, as attorney in fact of David Costaguta & Company, wrote Weill, Feinberg Co., Inc., a registered letter, a copy of which is hereto annexed, marked "Exhibit H," and received back the return receipt showing the delivery of said letter to Weill, Feinberg Co., Inc. Although said plaintiff claims in the bill of complaint and in "Exhibit A" attached thereto that he resold practically all of these goods prior to February 16, 1920, he nevertheless on February 16, 1920, wrote to Weill, Feinberg Co., Inc., a letter, copy of which is hereto attached marked "Exhibit I." On February 27, 1920,

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no reply having been made by Weill, Feinberg Co., Inc., to said letter of February 17, 1920, "Exhibit H," deponent and W. H. Merritt called upon Weill, Feinberg Co., Inc., and exhibited to Mr. Weill and Mr. Feinberg the original carbon copy of said letter of February 17, 1920, "Exhibit H," and made demand for the payment of the sum of \$28,241.58. These gentlemen replied that on February 25, 1920, their company had paid to the plaintiff the sum of \$21,708.20 in payment of the three certain invoices appearing in said letter of February 17, 1920, "Exhibit H," as bills Nos. 17-a, 18 and 19, aggregating \$21,708.20, and then and there exhibited to deponent and said W. H. Merritt a written receipt on a letterhead of David Costaguta & Company signed "David Costaguta & Company, by H. S. De Rees," acknowledging receipt of the payment of said sum of \$21,708.20.

Although said plaintiff claims in his bill of complaint and "Exhibit A" thereto attached that he sold to Weill, Feinberg Co., Inc., bill #7, containing ten items aggregating \$3810, on January 5, 1920, and that on the next day, January 6, 1920, he resold this same bill to Wm. B. Flesh of 63 Leonard Street, New York City, the fact is that on January 28, 1920, Weill, Feinberg Co., Inc., paid for said bill with its own check drawn to the order of David Costaguta & Company. Although said plaintiff claims in his bill of complaint and moving affidavit that practically all of the goods represented by bills 17a, 18 and 19, as set out in "Exhibit A" attached to the bill of complaint, are still on hand or have been sold by him to persons other than Weill, Fein-



*Affidavit of Leon Grumet.*

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berg Co., Inc., the fact is that all of the goods represented by said bills, Nos. 17a, 18 and 19, were included in the payment of \$21,708.20 and were paid for by Weill, Feinberg Co., Inc., as shown by the receipt held by that firm for said sum. Deponent denies the plaintiff's allegations that none of the invoices covering said 65 cases of merchandise were ever delivered to Weill, Feinberg Co., Inc., and deponent has in his possession copy of a letter from Weill, Feinberg Co., Inc., acknowledging receipt of certain of said invoices, and further alleges that when he was at the office of Weill, Feinberg Co., Inc., he personally saw others of said invoices in the possession of Weill, Feinberg Co., Inc., which said plaintiff claims were never delivered.

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**LEON GRUMET.**

Sworn to before me this

26th day of March, 1920.

BRADFORD BUTLER,

Notary Public,

Kings Co., No. 464.

Certificate filed in New York Co., No. 567.

Commission expires March 30th, 1921.

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484 **Affidavit of Manuel Garza-Aldape Sub-  
mitted in Opposition to Jurisdiction  
and Application for Receiver  
and Injunction.**

IN THE

DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN OF NEW YORK.

HENRY S. DE REES,

Plaintiff,

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against

DAVID COSTAGUTA, MARCOS A.  
ALGIERS, ALEJANDRO SASSOLI,  
EUGENIO OTTOLENGHI, individu-  
ally and as copartners in busi-  
ness, composing the copartner-  
ship of David Costaguta & Com-  
pany, Renado Taffell and the  
American-European Trading  
Corporation,

Defendants.

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STATE OF NEW YORK, }  
COUNTY OF NEW YORK. } ss. :

MANUEL GARZA-ALDAPE, having been duly sworn,  
deposes and says:

I. My name is Manuel Garza-Aldape; I am a  
native of the Republic of Mexico; I am an attorney-  
at-law, admitted to the Bar of Mexico; and I am well

acquainted with the civil law in force in Spanish America. For the last four years I have been associated with the firm of Curtis, Mallet-Prevost & Colt, 30 Broad Street, New York City, to advise them in matters of Spanish American law. I have made a special study of the laws of the Argentine Republic and am well acquainted with the same.

II. I have carefully examined a Spanish copy of the contract made at Buenos Aires, Argentine Republic, November 1, 1917, between David Costaguta and Company and Henry S. De Rees. This contract does not constitute a partnership under the Argentine law for the following reasons:

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(a) The association is not given a firm name, an indispensable requisite in Argentine partnerships.

(b) No attempt is made to render the association a legal entity, such as partnerships are under the Argentine law.

(c) Mr. De Rees, one of the associates, is not made unrestrictedly liable towards third parties for acts done under the contract, as would be the case if the association constituted a partnership.

(d) The contract is not drawn up in the form required for partnership articles by Article 291 of the Code of Commerce of the Argentine Republic, under which article such documents must contain, in addition to the data included in the contract under consideration, clauses showing: (1) the domiciles of the parties, (2) the firm name, (3) the domi-

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*Affidavit of Manuel Garza.*

cile of the partnership, (4) the organization of the management and the mode of surveillance.

III. It is evident that the parties themselves never regarded their association as a partnership, since they made no attempt to record the contract in the Registry of Commerce, as is required with respect to all articles of partnership.

IV. Of the distinct forms of association recognized by the Argentine law, the association formed by the contract under examination most closely resembles the loose association called "accidental or participating association" and which is thus defined in the Code of Commerce:

"Article 395. A participating association is the accidental (temporary) joining of two or more persons for one or more specific and transitory commercial operations, one, some or all of them acting in their individual name, without a firm name, and without fixing a domicile."

V. In an accidental or participating association title to the merchandise dealt in is not vested in the association but in the person or persons in whose name the merchandise is purchased.

MANUEL GARZA-ALDAPE.

Sworn to before me this  
27th day of March, 1920.

MANUEL MATZENO,  
Notary Public,  
N. Y. County.

(Seal)

**Affidavit of Arthur Manly Submitted in      493**  
**Opposition to Jurisdiction and Ap-**  
**plication for Receiver and In-**  
**junction.**

IN THE

DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

HENRY S. DE REES,  
 Plaintiff,

vs.

DAVID COSTAGUTA *et al.*,  
 Defendants.

Affidavit.

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STATE OF NEW YORK, }  
 COUNTY OF NEW YORK, } ss. :

ARTHUR MANLY, being duly sworn, deposes and says:

That he knows both the Spanish and English languages and is employed by the firm of Curtis, Mallet-Provost & Colt, 30 Broad Street, New York City, in the capacity of a translator to translate documents and papers written in the Spanish language into the English language and documents and papers written in the English language into the Spanish language, and has been employed in such capacity for five years.

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*Affidavit of Arthur Manly.*

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That he has carefully compared the English translation of the contract between David Costaguta & Company and Henry S. De Rees, dated Buenos Aires, November 1st, 1917, which is annexed hereto, with the Spanish copy of the contract attached as Exhibit A to the affidavit of Henry S. De Rees, verified the 10th day of March, 1920, forming one of the papers upon which the order to show cause was made herein by Hon. Learned Hand, dated March 10th, 1920, and states that the annexed translation is a true, correct and accurate translation of said Spanish copy of the said contract.

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ARTHUR MANLY.

Sworn to before me this  
27th day of March, 1920.

MANUEL MATZENO,  
Notary Public,  
(Seal) N. Y. County.

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The translation of the contract referred to in the foregoing affidavit as Exhibit A is omitted. It is identical with and printed as Exhibit B, annexed to the affidavit of the plaintiff on page 82 hereof.

**Exhibits Annexed to the Affidavit of      499**  
**Leon Grumet.**

**EXHIBIT B.**

B. Aires, 30 de Noviembre 1917.

Senor H. S. De Rees,  
 Ciudad.

Muy senor nuestro:

Resumimos a continuacion los asuntos que motivan su actual viaje a Norte America:

1. Los varios pleitos que tenemos entablados contra fabricantes per falta de entrega a malas entregas, y definir cualquier reclamacion que tengamos pendiente. 500

2. Seguir y cuidar la ejecucion de los contratos en curso con los varios fabricantes, bajo las condiciones y garantias ya establecidas.

Por lo que se refiere a nuevas compras de medias, podra Ud. efectuarlas hasta la suma de U\$S.500000,—(Quinientosmil Dollars), y debera Ud. darnos a la conclusion de cada negocio, aviso y remitirnos para nuestro gobierno un ejemplar de cada contrato.

Si alguno u otro de los tipos de medias que tratamos, tuviese aqui menor u mas lenta salida, lo tendremos a Ud. informado por telegrafe para que Ud. pueda vender con beneficio en esa algun lote de esos tipos, a se abstonga de hacer nuevas compras en los mismos. Asimismo nos reservamos la facultad de modificar la cantidad arriba mencionada de U\$S. 500.000,—en caso que la situacion de nuestras plazas a otros motivos nos aconsejarian de hacerlo. 501

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*Exhibits to Affidavit of Leon Grumet.*

Se servira Ud. darnos por cada correo, noticias detalladas de todas sus gestiones, soa por lo que se refiere a los pleitos y reclamaciones arriba mencionados, como por todo lo que se relaciona con la ejecucion de los contratos en curso, y el negocio en general de las Medias.

Auguramosle un feliz viaje y buen exito en todas sus gestiones y saludamosle muy cordialmente.

DAVID COSTAGUTA & CIA.

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## EXHIBIT D.

B. Aires, November 30th, 1917.

Mr. H. S. De Rees,  
City.

Dear Sir:

We are giving you detail of the subjects, that make necessary your trip to North America:

1. The several claims that actually we have against manufacturers for not or wrong deliveries, and define any other pending claim.

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2. To follow and take care of the Contracts in force with several manufacturers, under the conditions and guaranties established.

Therefore, in reference to new purchases of hosiery you can do it, up to the amount of \$500.000 (Five hundred thousand Dollars) and as soon as you finish each transaction you ought to give us



*Exhibits to Affidavit of Leon Grumet.*

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advice, and send for our knowledge a copy of each contract.

If some of the styles of hosiery that we have talked about, was not accepted here or difficult to sell, we shall give you telegraphic information, so you can sell with profit in that City some merchandise of those styles, or you do not make any purchase of same. We reserve our right of modifying the amount above mentioned of \$500,000.—in case that the situation of our business and market, would advise us to do it.

You will give us by each mail, detail and notice of all your transactions, either referring to claims as above mentioned, or referring to the execution of the Contracts in force, and in general concerning to the hosiery business.

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We wish for you a very happy trip, and success in all your transactions.

Yours very truly,

DAVID COSTAGUTA & CO.

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*Exhibits to Affidavit of Leon Grumet.*

## EXHIBIT E.

January 2nd, 1918.

DERESCOSTA

NEW YORK

HOSIERY BOHRWINDE DUTI-  
 ABLE ASSEMBLATO ADDRAP-  
 PARE CROPSIA ADENOPHORE  
 NOTHING FOR CHILE ASOAK

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COSTAGUTA.

## EXHIBIT F.

## TRANSLATION.

## CODE WORD

HOSIERY	Hosiery
BOHRWINDE	Sale for the month amount to..
DUTIABLE	60000
ASSEMBLATO	Weak and Dull market
ADDRAPPARE	Buy only
CROPSIA	250,000 Dollars
ADENOPHORE	Do not buy
NOTHING	Nothing
FOR	for
CHILE	Chile
ASOAK	Market heavy and dull.

510

## EXHIBIT G.

DAVID COSTAGUTA, MARCOS A. AL-  
GEIRS, ALEJANDRO SASSOLI, and  
EUGENIO OTTOLENGHI, a co-  
partnership trading as DAVID  
COSTAGUTA & COMPANY

vs.

FRANK Y. KITZMILLER, trading  
as F. Y. KITZMILLER Co., suc-  
cessor to BECHTELSTVILLE HO-  
SIERY MILLS

In the Court  
of Common  
Pleas of Berks  
County  
No. 69 October  
Term, 1919.  
In Assumpsit

512

## PLAINTIFF'S STATEMENT.

David Costaguta, Marcos A. Algeirs, Alejandro Sassoli, and Eugenio Ottolenghi, a co-partnership trading as David Costaguta & Company, of Buenos Aires, Republic of Argentina, South America, claims of Frank Y. Kitzmiller of the City of Reading, Pennsylvania, trading as F. Y. Kitzmiller Co., successor to Bechtelsville Hosiery Mills, of Bechtelsville, County of Berks and State of Pennsylvania, the sum of eleven thousand, five hundred fifty dollars (\$11,550) damages for breach of contract, under the following averments of facts and circumstances:

513

1. On January 24, 1918, the defendant, Frank Y. Kitzmiller, proprietor of the Bechtelsville Ho-

siery Mills of Bechtelsville, Berks County, State of Pennsylvania, entered into an agreement in writing with the plaintiffs whereby the defendant agreed to manufacture and deliver to the plaintiffs f. o. b. steamer, port of New York, 15,000 dozen pairs of women's hosiery at \$2.90 per dozen pairs to be delivered in the amounts and at the times as follows, March, April and May, 1918, shipping colors first, then white, and then black, and the plaintiffs agreed to pay for the hosiery the sum of \$2.90 per dozen pairs. A copy of the said agreement is attached hereto and made a part hereof.

515

2. The defendant, between May 18, 1918, and November 7, 1918, delivered 4,500 dozen pairs of women's hosiery under the terms and conditions of the aforesaid contract. Subsequent to November 6, 1916, the defendant, although frequently requested to do so, failed and refused to make further deliveries of hosiery under the aforesaid contract, and on July 31, 1919, rescinded the said contract by refusing to deliver the 10,500 pairs of hosiery still due the plaintiff under the terms thereof.

516

3. In reliance upon the promise of the defendant to deliver the said hosiery at the times set forth in the said contract, the plaintiffs sold the said hosiery before actual delivery thereof, under contracts for the delivery of the said hosiery by the plaintiffs at certain specified times.

4. On the date of the defendant's refusal to perform the said contract by the delivery of 10,500 dozen pairs of hosiery, the market price of hosiery

*Exhibits to Affidavit of Leon Grumet.*

517

at the same quality was \$4.00 per dozen pairs, an advance of \$1.10 per dozen pairs over the contract price.

Wherefore the plaintiffs claim of the defendant the sum of \$11,550 with interest thereon at six per cent, from July 31, 1919.

WELLINGTON M. BERTOLET  
Attorney for Plaintiffs

STATE OF NEW YORK, }  
CITY OF NEW YORK, } ss. :

518

H. S. DeRees, agent of David Costaguta, Marcos A. Algeirs, Alejandro Sassoli and Eugenio Ottolenghi, trading as David Costaguta & Company, being duly sworn deposes and says that the facts set forth in the foregoing statement of claim are correct and true to the best of his knowledge and belief.

H. S. DeREES.

Sworn to and subscribed before me this  
8th day of Sept., 1919

EDWIN C. GIBSON

519

Notary Public for

(Seal) Kings County No. 146

Certificate filed in New York County No. 21

My commission expires March 30, 1921.

520

*Exhibits to Affidavit of Leon Grumet.*

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## EXHIBIT H.

February 17th, 1920.

Messrs. Weill Feinberg Co. Inc.  
350 Broadway, Room #711,  
New York.

Gentlemen :

521 We wish to advise you that we have discounted  
our credits with the AMERICAN-EUROPEAN TRADING  
CORPORATION, temporarily at 1270 Broadway, Room  
402, New York City, to whom please take note to  
pay the bills which you owe us, detail of which  
we are giving below.

Very truly yours,

DAVID COSTAGUTA &amp; COMPANY.

(Signed) LEON GRUMET

Attorney-in-fact.

522

*Exhibits to Affidavit of Leon Grumet.*

523

Bill	February	6th, 1919	5.13	
"	"	21st, "	.65	
"	April	2nd, "	1.15	
Bill #1541	December	4th, 1919	.75	
" #1569	"	18th, "	3.25	
" # 18	January	14th, 1920	8708.20	
" # 19	"	14th, "	11730.—	
" # 17A	"	13th, "	1270.—	
" # 27	"	20th, "	990.—	
" # 28	"	" , "	452.10	
" # 29	"	" , "	594.00	
" # 30	"	" , "	1320.00	
" # 31	"	" , "	382.80	
" # 32	"	" , "	385.25	
" # 35	"	23rd, "	2893.30	
Merchandise returned, January 15th, 1920			495.00	524
			28736.58	495.00
Balance due			28241.58	
			28736.58	28736.58

525

526

*Exhibits to Affidavit of Leon Grumet.*

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## EXHIBIT I.

February 16, 1920.

Weill, Feinberg Co. Inc.  
395 Broadway,  
New York.

Gentlemen :

Referring to the various sales made to you on  
the conditions that you were to have from 10 to 30  
days to pay in, we have granted your request of  
527 another two weeks, making 45 days in all, if it  
is necessary, or as much previous to that as any-  
way possible.

Yours very truly,

DAVID COSTAGUTA & COMPANY.  
(Signed by) H. S. DE REES.

D : G.

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The foregoing affidavits and exhibits submitted  
in opposition to the jurisdiction of the District  
Court and the motion for Receiver and injunction,  
528 are marked filed, U. S. District Court, S. D. of  
N. Y., April 7, 1920.



**Affidavit of Anna G. Saft Submitted in 529**  
**Reply and in Support of Jurisdiction**  
**and for Receiver and Injunction.**

IN THE

DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

HENRY S. DE REES,  
 Plaintiff,

against

DAVID COSTAGUTA & COMPANY  
 and others,  
 Defendants.

530

CITY AND STATE OF NEW YORK, }  
 SOUTHERN DISTRICT OF NEW YORK, } ss.:

ANNA G. SAFT, being duly sworn, deposes and says:

I. That she resides at No. 541 Putnam Avenue, in the City of New York, Borough of Brooklyn.

II. That in or about the month of January, 1918, she was employed by Henry S. De Rees, the above-named plaintiff, as secretary and assistant book-keeper and office manager in the New York office of the business conducted there of the Hosiery Department of David Costaguta & Company, from January, 1918. to and including the 17th day of February, 1920; and also after May, 1918; when Mr. 531

Brunago came to New York as general agent of David Costaguta & Company, and the business was not confined entirely to the hosiery business; her employment was as assistant bookkeeper and office manager relative to all business transacted at that office.

III. That in such capacities the collections of bills, deposits of money and drawing of checks for payments made came directly under her observation.

IV. That during the latter part of December, 1919, or the early part of January, 1920, suits were instituted in New York City by various parties, among whom were Lunham & Moore for about \$700 for freight and insurance levied on deposits kept in the name of David Costaguta & Company in the National City Bank of New York, and by C. Munch, one Weiss and by Gaston, Williams & Wigmore, on claims to recover the moneys paid out by them respectively on contracts to purchase some 9,091 hides from David Costaguta & Company and levied the same upon said hides in New York City of the estimated value of \$150,000, and also levied upon all other assets in the business place of David Costaguta & Company at #22 White Street, New York City, as well as the bank accounts kept in the name of David Costaguta & Company in New York City.

V. That after the levy of said attachments for several weeks all monies collected on account of the hosiery department of said David Costaguta & Company were turned over to Mr. Eugenio Ottolenghi,

who deposited the same in the Trust Company of New Jersey until after, as she was informed, by said Ottolenghi, an arrangement of settlement was made with the attaching creditors to release the attachments when the amounts of their claims, as agreed upon, should be paid. That said Ottolenghi informed deponent that they did not have any money in hand to relieve said attachments and deponent was directed by him to use the telephone persistently from day to day and make every effort personally to collect all bills of the hosiery department as fast as they could be collected. That he needed the money to lift the attachments which had been levied upon the hides and other assets.

536

That during the period after said attachments were levied and before their release, she knows positively that the following collections of debts due the Hosiery Department of David Costaguta & Company were made, to wit :

A. Kommel & Son, January 5th, 1920....	\$3,293.40
A. Kommel & Son, January 6th, 1920....	10,593.31
Mendelson, Lopez & Co., January 9th,	
1920 .....	756.00
Amodo Paz & Cia, January 12, 1920....	800.00
Prieto Huos, January 13, 1920.....	365.25
A. S. Puccio & Co., January 16, 1920....	1,588.50
Mendelson, Lopez & Co., January 17, 1920	756.00
Heyman & Hawthorne, January 20, 1920.	3,156.20
Weill, Feinberg & Co., January 21, 1920..	5,245.00
Weill, Feinberg & Co., January 21, 1920..	548.60
A. Kommel & Son, January 21, 1920....	17,301.90

537

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\$44,404.16

539

Deponent handled the checks for these collections and knows that a majority of them was deposited in the Trust Company of New Jersey, and that after an informal settlement had been arranged some of them were deposited in the Guaranty Trust Company of New York and the Foreign Banking Corporation. That the attachments were levied and the Sheriff's officers withdrawn in the latter part of January, 1920, and while deponent did not see the checks which were given to pay off the attaching creditors, she was informed by said Ottolenghi that the funds which had been so deposited in the Trust Company of New Jersey, in the Guaranty Trust Company and the Foreign Banking Corporation, had been used in paying off the attachments on the said hides, and he said that it took all the funds in those banks and what the Hosiery Department had in the National City Bank to pay off said attachments.

540

VI. That among the collections made for the Hosiery Department, which were so deposited and used by said Ottolenghi and which were handled by deponent as above set forth, were certain checks of A. Kommel and Son, dated respectively January 4th, 5th, 19th and 20th, 1920, the originals of these checks having passed through the bank and are now in the possession of A. Kommel & Son of #519 Broadway, New York City, and the endorsements thereon show the places of their deposit by David Costaguta & Company, as follows: Check of January 4th, 1920, for \$3,293.40 in the Trust Company of New Jersey; check of January 5th, 1920, for

*Affidavit of Anna G. Saft.*

541

\$10953.31 in the Trust Company of New Jersey; check of January 19th, 1920, for \$12,301.90 in the Guaranty Trust Company of New York, and check of January 20th, 1920, for \$5,000 in the American Banking Corporation of New York. That deponent handled all of the above checks and knows that they were for collections for hosiery sold at the hosiery department of David Costaguta & Company.

Deponent annexed hereto, marked Exhibits "P," "Q," "R" and "S," copies of said original checks with the endorsements thereon.

ANNA G. SAFT.

542

Sworn to before me this  
31st day of March, 1920.

JACOB S. OHRMER,  
Commissioner of Deeds,  
City of New York.

Certificate filed in Kings Co., Register's No. 107.  
Certificate filed in Kings Co., Clerk's No. 12.  
Term expires May 11, 1920.

543

**544 Exhibits Annexed to Affidavit of Anna  
G. Saft.**

**EXHIBIT P.**

No. 2830

**A. KOMMEL & SON**  
519 Broadway

New York, Jan. 4, 1920.

Endorsement of this check  
by payee constitutes re-  
ceipt in full for the follow-  
ing account.

**545**

IF INCORRECT PLEASE RETURN.

Date—Invoice—Amount
12/15                      3293.40

Pay to the order of DAVID COSTAGUTA  
& CIA. \$3,293.40/100—Thirty-two hun-  
dred ninety-three dollars forty cents.

To

THE NATIONAL CITY BANK  
of New York.

(Signed) A. KOMMEL & SON

Endorsement: For deposit with the Trust Company  
of New Jersey and credit to the ac-  
count of David Costaguta and Com-  
pany.

**546**

Pay Chase Nat'l Bank New York  
or order.

Prior endorsement guaranteed Jan.  
5, 1920.

*Exhibits to Affidavit of Anna G. Saft.*

547

The Trust Company of N. J.  
 Peoples Safe Deposit, branch F.  
 E. Ainbruser, Vice Pres.  
 Received payment N. through New  
 York Clearing House Jan. 5.  
 Chase Nat'l Bank, New York, No. 74.

## EXHIBIT Q.

No. 2837

A. KOMMEL & SON  
 519 Broadway

548

New York, Jan. 5, 1920.

Endorsement of this check  
 by payee constitutes re-  
 ceipt in full for the follow-  
 ing account.

IF INCORRECT PLEASE RETURN.

Date—Invoice—Amount  
 12/15                      10953.31

Pay to the order of DAVID COSTAGUTA  
 & CIA. \$10953.31/100—Ten thousand  
 nine hundred fifty-three dollars thirty-  
 one cents.

549

To

THE NATIONAL CITY BANK  
 of New York.

(Signed) A. KOMMEL &amp; SON

550

*Exhibits to Affidavit of Anna G. Saft.*

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Endorsement : For deposit with the Trust Company of New Jersey and credit to the account of David Costaguta and Co. Pay Chase Natl. Bank of New York or order.

Prior endorsement guaranteed Jan. 7, 1920.

The Trust Company of New Jersey. Peoples Safe Deposit branch, F. A. Ambruster, Vice Pres.

Received Payment through New York Clearing House Jan. 7, 1920.

551

Chase Nat'l Bank, New York, No. 74.

552



## EXHIBIT R.

No. 9635

A. KOMMEL & SON  
519 Broadway

New York, Jan. 19, 1920.

This check is in full payment  
of the following bills

IF INCORRECT PLEASE RETURN.

12/17	17301.90
on a/c	5000.

554

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 12301.90

No receipt necessary.

Pay to the order of DAVID COSTAGUTA  
& Co. \$12301.90/100—Twelve thousand  
three hundred one dollars ninety cents.

To

THE CORN EXCHANGE BANK 1-45  
Broadway Branch 3  
New York, N. Y.

(Signed) A. KOMMEL &amp; SON. ♥

Endorsement: For deposit with Guaranty Trust  
Co. to the credit of David Costaguta & Co. 555

Received payment through New  
York Clearing House Jan. 22/1920.  
Guaranty Trust Co., M—New York

T

## EXHIBIT S.

No. 9620

A. KOMMEL & SON  
519 Broadway

New York, Jan. 20, 1920.

This check is in full payment  
of the following bills

IF INCORRECT PLEASE RETURN

on account.

No receipt necessary.

557

Pay to the order of DAVID COSTAGUTA  
\$5,000.00/100—Five thousand dollars.

To

THE CORN EXCHANGE BANK 1-45  
Broadway Branch 3  
New York, N. Y.

(Signed) A. KOMMEL & SON.

Endorsement: For deposit with American Foreign  
Banking Corp. Credit to the ac-  
count of David Costaguta & Co.

Pay to the order of Chase National  
Bank, N. Y., prior endorsement  
guaranteed American Foreign Bank-  
ing Corporation, New York, C. A.  
Mackenzie, Treas.

558

Jan. 17. Received payment through  
New York Clearing House Jan. 17,  
1920. Chase Nat'l Bank N. Y. No.  
74.

**Affidavit of Henry S. De Rees Submitted** 559  
**in Reply and in Support of Jurisdic-**  
**tion and for Receiver and In-**  
**junction.**

IN THE

DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

HENRY S. DE REES,  
 Plaintiff,

against

DAVID COSTAGUTA and others,  
 Defendants.

560

STATE OF NEW YORK, }  
 COUNTY OF NEW YORK, } ss. :

HENRY S. DE REES, being duly sworn, deposes  
 and says:

I. That your deponent has read the affidavit of  
 Leon Grumet, verified the 26th day of March, 1920,  
 interposed on behalf of the defendants, the Ameri-  
 can-European Trading Corporation and Renado Taffel, said Grumet admitting therein that he is the  
 President of said defendant American-European  
 Trading Corporation. That in reply thereto your  
 deponent avers that it is not a fact, as averred by  
 said Grumet, that your deponent only came to this

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country with the expectation or intention of staying a month or two. That while it is true that deponent intended, if business conditions necessitated it, he would return to Buenos Aires, it was always deponent's intention to return to the City of New York as headquarters for the supply of the merchandise dealt in by the said copartnership.

That from the inception of the relations between your deponent and the said David Costaguta & Company under the contract of November 1st, 1917, it was contemplated and intended that a permanent branch place for the transaction of the business of the partnership should be established in the City of New York. That in furtherance of said purpose and intent and on the 30th day of March, 1918, your deponent, on behalf of said copartnership, opened such place of business at No. 395 Broadway, in the City of New York, Borough of Manhattan, and entered into an agreement of lease with the Equitable Life Assurance Society of the United States for one year commencing on the 1st day of May, 1918, and ending on the 1st day of May, 1919, at the rental of \$1,800 per annum, a copy of which said lease is hereto annexed and marked Exhibit "A."

II. That said Grumet in his affidavit (Par. 7) refers to certain cables and letters for the purpose of indicating that it was intended that your deponent should immediately return to Buenos Aires and refers to a cablegram dated February 13th, 1918, inquiring when your deponent would return to Buenos Aires. That on February 23rd, 1918,

*Affidavit of Henry S. De Rees.*

565

your deponent received a cablegram from Buenos Aires requesting deponent not to leave until the receipt of a letter from said Costaguta & Company, dated February 22nd, 1918, a copy of said cable being hereto annexed marked Exhibit "B."

That under date March 23rd, 1918, your deponent received another cable from said David Costaguta & Company at Buenos Aires, requesting deponent to await the arrival of one Brugnago, the person mentioned in your deponent's affidavit upon which the rule *nisi* was granted, a copy of said cable being hereto annexed marked Exhibit "C."

III. That the said Grumet avers in his said affidavit (Par. 1) that—

566

"for a period of about eleven years prior to February 16th, 1920, with the exception of the fifty-eight months spent by him in the French Army, he was in the employ of David Costaguta & Company."

That, as a matter of fact, on the 1st day of November, 1917, when the contract between your deponent and said David Costaguta & Company was executed, the said Leon Grumet was not in the City of Buenos Aires, and deponent was informed by said Grumet, after the latter came to New York, that he had never been in Buenos Aires. That said Grumet had no knowledge other than hearsay of the contract entered into between your deponent and said David Costaguta & Company, or of the transactions between deponent and said firm, in respect to said contract. That said Grumet was not in the City of Buenos Aires during any of the time be-

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569

tween said 1st day of November, 1917, and the date of the arrival of said Grumet in the City of New York in the Fall of 1919. That deponent for the first time met said Grumet when the latter arrived from France in the Fall of 1919, that the said Grumet is a young man apparently about 23 to 24 years of age. That from November 1st, 1917, until the conclusion of the European War, or his demobilization from the French Army, the said Grumet was in Europe and after his demobilization he remained in France at the branch office of David Costaguta & Company in the City of Paris as a minor employee of David Costaguta & Company in France, of which Mr. Fraser was manager, as said Grumet informed your deponent, and he came to the United States directly from France, and upon his arrival here acted as an assistant to Eugenio Ottolenghi until the latter's departure for Buenos Aires, when said Grumet became the President of the American-European Trading Corporation and representative under Power of Attorney from said Ottolenghi of the firm of David Costaguta & Company of Buenos Aires.

570

That in truth and in fact it was impossible for the said Grumet to have any knowledge of many of the important facts and circumstances alleged in his affidavit, or of the intention of your deponent or the members of the firm of David Costaguta & Company, respecting the transactions between your deponent and said firm, or of the facts and circumstances alleged in your deponent's affidavit, which the said Grumet assumes to deny upon knowledge and as to the matters denied by the said Grumet upon information and belief, and the averments

which he makes upon information and belief must be predicated upon information received from others and purely hearsay, the sources of his information and the grounds of his belief not being referred to or averred in his said affidavit.

IV. That it is averred in the affidavit of said Grumet (Par. 8) that deponent, on behalf of David Costaguta & Company, instituted an action against F. Y. Kitzmuller, and that your deponent verified the complaint in said action in the following language:

"H. S. DeRees, agent of David Costaguta, Marcos A. Algiers, Alejandro Sassoli and Eugenio Ottolenghi, trading as David Costaguta & Company, being duly sworn deposes and says that the facts set forth in the foregoing statement of claim are correct and true to the best of his knowledge and belief,"

572

said action being referred to for the purpose of indicating that your deponent did not claim that he was a partner interested in the firm of David Costaguta & Company and as a declaration upon your deponent's part that he was simply an agent. That said complaint was verified by your deponent on the 8th day of September, 1919.

That at the time of the institution of said suit your deponent understood and believed, by reason of the fact that the contract for the sale and delivery of the merchandise was made and entered into by your deponent in the name of David Costaguta & Company, without the disclosure in that case to the said vendors of the fact that your deponent was a silent or dormant partner of the firm

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of David Costaguta & Company, that it was unnecessary for your deponent to aver his relationship to the firm of David Costaguta & Company in his affidavit verifying said complaint, and that as a partner of David Costaguta & Company in and about the transaction in question he had the right as agent of the other partners to institute said suit and verify said complaint as agent.

That on the 30th day of March, 1918, and as evidence of the fact that your deponent was and considered himself to be a partner of the firm of David Costaguta & Company in said Hosiery Section, immediately after your deponent's arrival in the City of New York, and in the lease entered into between your deponent and the said Equitable Life Assurance Society of the United States on behalf of the said David Costaguta & Company, your deponent executed said lease and signed the same, as follows:

"David Costaguta & Company, H. S. De Rees, member of said firm."

That a copy of said lease so executed was deposited by your deponent with the books, papers and records of said David Costaguta & Company at its place of business in the City of New York and now remains therein, said place of business having removed from 395 Broadway to No. 22 White Street, in the City of New York, and to the best of your deponent's knowledge and belief, is now in the custody of said Leon Grumet as agent of the said David Costaguta & Company in this City, or of the American-European Trading Corporation.



That there were several other suits and legal proceedings instituted by your deponent in the United States in and about the business of said copartnership and hosiery business, in which your deponent verified legal documents and in which your deponent averred and stated that he was a member of the firm of David Costaguta & Company.

V. That on or about the 18th day of February, 1919, twenty-one numbered cases of merchandise containing hosiery, and one lot of 173½ dozen were in the premises of said David Costaguta & Company at No. 22 White Street, in the City of New York, Borough of Manhattan, as appears by a receipt signed by Leon Grumet and delivered by him to your deponent, a copy of which signed by your deponent is in the possession of said Leon Grumet, said receipt being hereto annexed marked Exhibit "D."

578

VI. That the said Grumet (Par. 11) denies that there is now in the custody of the defendant American-European Trading Corporation said twenty-one cases of merchandise or that said merchandise was transferred to it by said David Costaguta & Company, and avers that no hosiery whatever was transferred by said David Costaguta & Company to the said defendant company, or that it now owns any hosiery. He further avers that the only hosiery now owned by said David Costaguta & Company consists of "about" eleven cases located in the City of the approximate value of \$10,430, not including three cases about to be shipped to a customer in Havana when the restraining order was served.

579

580

*Affidavit of Henry S. De Rees.*

581

That in truth and in fact all of said twenty-one cases are now actually in the custody and control of the said defendant company, as appears by the following: That on the 11th day of March, 1920, the day after the filing of the Bill of Complaint herein, your deponent personally served upon the Allison Storage & Transfer Co. Inc., of 74-78 Cliff Street, in the City of New York, Borough of Manhattan, a copy of said restraining order, and thereafter on the 12th day of March, 1920, the said Allison Storage & Transfer Co. Inc. wrote the following letter to Messrs. Erwin, Fried & Czaki, your deponent's solicitors herein, indicating that nine of the twenty-one cases referred to in the receipt of the said Leon Grumet, Exhibit "D" hereto annexed, were then actually held by said Allison Storage & Transfer Co. Inc. "for the account of the American-European Trading Corporation."

"Telephone 6755, 6756, 6757—Beekman

THE ALLISON STORAGE & TRANSFER CO. INC.  
74-76-78 Cliff Street  
New York

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	Warehouses at
Warehousing of Every	457-459 Broome St.
Description	74-76-78 Cliff St.
Insurance	507-509 Washington St.
W G 1000	March 12, 1920.
Messrs. Erwin, Fried & Czaki,	
15 William St.,	
New York.	

Gentlemen:

In accordance with your request of March 10th we are listing below the merchandise we

*Affidavit of Henry S. De Rees.*

583

have stored in our warehouse at 507 Washington St., for the account of the American-European Trading Corporation.

1 case Hosiery marked DCC	5120	Buenos Aires			
		case #4804			
1 " " " "	105	Buenos Aires			
		case #592			
1 " " " "	5140	Buenos Aires			
		case #1025			
5 " " " "	008	Montevideo			
		case #5004-			
		5092-5555-			
		6924-5024			584
1 " " " "	147	no other			
		marks on			
		this case.			

These nine cases are stored under our numbers W-5 1418-1419-1420-1422-1423.

As we understand it we will hold these cases until advised by the court to release same.

Respectfully yours,

ALLISON STORAGE & TRANSFER CO. INC.

AG

Per A. Gradilona."

That on the 26th day of February, 1920, the American-European Trading Corporation wrote and delivered a memorandum letter to Messrs. Knight & Smith, #71 Franklin Street, a copy of which is hereto annexed marked Exhibit "E," wherein and whereby it gave directions to said Knight & Smith that the nine cases of merchandise held in the Allison Storage & Transfer Co. Inc.

585

and five additional cases, a total of fourteen in all, should be repacked for export in accordance with the instructions contained in said order and letter, Exhibit "E," hereto annexed.

587 That on the 11th day of March, 1920, your deponent personally served upon said Knight & Smith at #71 Franklin Street a certified copy of the restraining order herein, at which time there was then in the actual possession, custody and control of said Knight & Smith, for the account of the American-European Trading Corporation, five of said twenty-one cases of said merchandise, and that the said nine cases of merchandise in the possession of the Allison Storage & Transfer Co. Inc. and the five cases of merchandise in the possession of said Knight & Smith are actually held by the defendant corporation and for its account. Your deponent refers to the letter of the American-European Trading Corporation, signed by the defendant Taf-fel, dated February 28th, 1920, addressed to Messrs. Knight & Smith, as follows:

"AMERICAN-EUROPEAN TRADING CORP. to  
22 White St.  
New York

February 28th, 1920.

Messrs. Knight & Smith,  
71 Franklin St.,  
New York City.

Gentlemen:

In confirmation with our telephone conversation of to-day, referring to 9 cases of Hosiery

*Affidavit of Henry S. De Rees.*

589

## 5004-5024-5092-6294-5555-592-1025-804 & 2753 sent to you by Cross Hermanos Ltd. and delivered by the Allison Trucking Co., we shall send you besides five more cases numbered 1152-A-B-C-2432.

The total of 14 cases in your store, and as per instructions from our Mr. Grumet, given to your Mr. Smith, are to have special packing to be shipped to Buenos Aires Arg.

Our Mr. Grumet will be at your store again Monday morning and will give you personally all details that you may need regarding to the packing of the hosiery.

590

We remain yours very truly,

AMERICAN-EUROPEAN TRADING  
CORPORATION,

R. W. Tafel,  
Secrty.-Treasurer."

The original of this letter is now in the possession of deponent, received by him from Knight & Smith, and deponent knows the signatures thereon to be genuine, and he tenders same for inspection of the Court.

That on the 10th day of March, 1920, the date of the filing of the Bill of Complaint herein, your deponent accompanied the United States Marshal when he served upon said Leon Grumet and upon said defendant Taffel certified copies of said restraining order, at which time your deponent actually saw in the premises at No. 22 White Street six of said cases of merchandise referred to in said receipt of Leon Grumet, Exhibit "D" hereto an-

591

nexed, thus actually accounting for twenty of the twenty-one cases of merchandise referred to in said receipt, all of which said twenty-one cases were actually in the district on the date of the filing of the Bill and in the custody and control of the said Grumet as agent of the defendant David Costaguta & Company and as President of the American-European Trading Corporation.

VII. That the said Grumet in his affidavit (Par. 6) avers:

"that said department (referring to the hosiery section) in no sense constituted a separate and distinct business in the sense that it was segregated from the other or general business of said firm."

Deponent avers that at all times the hosiery section in which your deponent was interested was segregated and kept separate and apart from all other business of the said David Costaguta & Company, so far as the merchandise and accounts were concerned. That the stationery, books and records all indicated that the hosiery department or section in which your deponent was interested was a separate and distinct entity and business in and by itself, and the books used to record the transactions of the said business and the stationery employed in the conduct thereof so indicated upon their face. That annexed hereto, marked Exhibit "F," is a letter dated May 15th, 1918, on the letterhead used by said Department designating it as "Hosiery Department" of David Costaguta & Com-

pany. That annexed hereto, marked Exhibit "G," is a copy of a billhead rendered to Messrs. A. Kommel & Son, dated June 6th, 1919, indicating that it was rendered by the "Hosiery Department" of David Costaguta & Company.

VIII. That from the time of your deponent's arrival in the City of New York until subsequent to the month of May, 1918, all of the financial transactions of David Costaguta & Company in respect to the purchase and sale of hosiery in the United States were conducted by your deponent in the following manner: At various times during that period sums aggregating about \$150,000 were deposited by your deponent with the firm of Lunham & Moore, of New York City, including individual monies of your deponent, as well as monies received from David Costaguta & Company at Buenos Aires, which your deponent disbursed by his individual check in payment of merchandise purchased by him for said copartnership, and in which account your deponent deposited monies received by him on the sales of merchandise made by him of said copartnership. 596

That during said period the said David Costaguta & Company opened credits with the American Express Company in the City of New York aggregating between three to four hundred thousand dollars, which your deponent disbursed by orders signed in his individual name in payment of merchandise purchased by your deponent for the account of the said copartnership. 597

That during said period your deponent opened and maintained an account with the Pacific Bank

in the City of New York, in his individual name, in which, from time to time, he deposited sums aggregating from \$75,000 to \$100,000, representing monies received from Buenos Aires for the account of the copartnership, and collections which he made from merchandise which he sold for the account of the copartnership, which said monies your deponent disbursed by checks in his individual name for his individual account, as well as for the account of the said copartnership.

599

That during said period the said David Costaguta & Company opened with the National City Bank in the City of New York funds aggregating more than \$200,000, which were disbursed by said bank on orders signed by your deponent in his individual name, in payment of merchandise purchased by your deponent for the account of said copartnership.

600

IX. That in the month of May, 1918, your deponent, for the purpose of relieving himself of the details of the financial arrangements theretofore conducted by him, turned over to the said Brugnago, as agent for all parties and interests, all of the funds that he then had in his possession belonging to said copartnership, and bank accounts were then opened in the City of New York with the banks mentioned in the moving affidavit of your deponent, in the name of David Costaguta & Company, in which said banks from then on the funds collected for the merchandise sold by your deponent in the United States and elsewhere were deposited in the name of the said David Costaguta & Company.



*Affidavit of Henry S. De Rees.*

601

Deponent says that there is no outstanding indebtedness of the Hosiery Section or Department of David Costaguta & Company, unless it be some small amounts aggregating \$1,000 or some small liabilities for current expenses. That practically all the purchases of merchandise were made on very short term credits, allowing time for inspection after delivery in New York City.

HENRY S. DE REES.

Sworn to before me this  
31st day of March, 1920.

602

ANNA G. McCONNELL,  
Notary Public,  
Bronx Co. #1.  
Certificate filed in N. Y. Co. 58.

603

**604 Exhibits Annexed to Affidavit of Henry  
S. De Rees.**

**EXHIBIT A.**

AGREEMENT, made this 30th day of March, nineteen hundred and eighteen, BETWEEN THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, by JOHN J. HALLERON, AGENT, hereinafter designated as the Landlord, and DAVID COSTAGUTA & COMPANY of Buenos Aires, Argentine, hereinafter designated as the Tenant.

**605** WITNESSETH, that the said Landlord does hereby let unto the said Tenant, and the said Tenant does hereby hire from the said Landlord,

**606** ALL that certain rooms Numbers 706-8 in the building known and designated as Number Three Hundred and Ninety-Five (395) Broadway, Borough of Manhattan, New York City, to be used and occupied for the business of Offices, and Store Room, for the term of ONE (1) YEAR to commence on the First day of May, 1918, and to end at nine o'clock in the forenoon on the First day of May, 1919, at the yearly rent of Eighteen Hundred (\$1,800.00) Dollars, lawful money of the United States, payable in equal monthly payments in advance on the first day of each and every month during the term.

The above letting is upon the following conditions, all and every one of which the said Tenant covenants and agrees to and with the said Landlord to keep and perform:

*Exhibits to Affidavit of Henry S. De Rees.*

607

FIRST: This lease shall not be assigned or encumbered, and the said premises, or any part thereof, shall not be let or underlet, nor used or permitted to be used, for any purpose other than above mentioned, nor by any other person without the written consent of the said Landlord.

SECOND: The said Tenant shall take good care of the premises and fixtures, make good any injury or breakage done by such Tenant, or any agents, clerks, servants, and shall quit and surrender said premises, at the end of said term, in as good condition, as the reasonable use thereof will permit, and shall not make any alterations, additions, or improvements in said premises, or permit any additional lock or fastening on any door, without the written consent of said Landlord: and all alterations, additions or improvements, which may be made by either of the parties hereto upon the premises, except movable office furniture other than partitions, put in at the expense of the Tenant, shall be the property of the said Landlord, and shall remain upon and be surrendered with the premises, as a part thereof, at the termination of this lease, without disturbance, molestation or injury, but injury caused by moving said movable furniture in or out shall be repaired at the expense of the Tenant.

608

609

THIRD: In case of damage by fire, or other action of the elements, to the demised premises, the Landlord shall repair the same with all reasonable despatch, after notice of the damage. But in case the building generally throughout (though the herein demised premises may not be affected) be so injured

or destroyed that the Landlord shall decide, within a reasonable time, to rebuild or reconstruct the said building, then this agreement shall cease and come to an end, and the rent be apportioned and paid up to the time of such injury or destruction, provided, however, that such damage or destruction as here-inbefore mentioned, be not caused by the carelessness, negligence, or improper conduct of the Tenant, agents or servants. No claim for compensation shall be made by the Tenant, by reason of inconvenience, damage or annoyance arising from the necessity or repairing any portion of the building, however the necessity may occur.

FOURTH: The Landlord agrees to use due diligence in operating the elevators in said building, and in furnishing steam for warming the premises between October 15th and April 15th in each year, during the hours between 8 o'clock A. M. and 6 o'clock P. M., and in furnishing a reasonable amount of artificial light by fixtures supplied during the same hours and in causing the premises to be cleaned by the janitor, Sundays and Holidays excepted; but it is expressly agreed that if the operation of the elevator, or the furnishing of steam heat, light & janitor service shall cease by reason of accident, strike, repairs, cleaning out boilers, alterations or improvements to be made or done to any part of the apparatus or appurtenances belonging thereto, or any cause, the obligations of the Tenant under the terms of this lease shall not be affected thereby, nor shall any claim accrue to the Tenant by reason thereof.

FIFTH: The Landlord shall not be liable for any damage or injury to the demised premises, or goods, wares, merchandise, or property of the Tenant or any other person contained therein, done or occasioned by or from electric wiring, plumbing, water, gas, steam or other pipes, or sewage, or the breaking of any electric wire, the bursting, leaking, or running of water from any cistern, tank, washstand, water-closet or water-pipe, sprinkler system, radiator or any other pipe, in, above, upon, or about said building or premises, or which may at any time hereafter be placed therein; or for any damage occasioned by electricity or water, snow or ice being upon or coming through the roof, skylight, trap-door, or otherwise, or for any damages or injuries to person or property arising from acts or neglect of the co-tenants or occupants of the same building, or of any owners or occupants of adjacent or contiguous property, or from any other cause whatsoever.

614

SIXTH: The following RULES and REGULATIONS shall be faithfully observed and performed by the Tenant and the clerks, servants, and agents of such Tenant, to wit:

(a) The side-walk, entry, halls, passages, stair-cases and elevators shall not be obstructed, or used for any other purpose than for ingress and egress, nor shall any property of any kind be moved in or out of the building between 9 o'clock A. M. and 5 o'clock P. M.

615

(b) The toilet-rooms, water-closets, urinals and other water apparatus shall not be used for any pur-

poses, other than those for which they were constructed, and no improper substance or article shall be thrown therein, nor shall any faucet be left open or any water wasted.

(c) The sashes, sash-doors, windows, glass-doors, and any skylights that reflect or admit light into the halls, or other places of said building, shall not be covered or obstructed.

(d) No one shall mark, paint, or drill into or in any way deface the walls, ceilings, partitions, floors, wood, stone or iron work; and no nails, hooks or screws shall be driven or inserted in any part of the walls or woodwork of said building.

(e) If Tenants desire telegraphic or telephone connections, the landlord will direct the electrician as to where and how the wires are to be introduced, and without such direction no boring or cutting for wires will be permitted.

(f) No sign, advertisement, notice or device, shall be inscribed, painted or affixed, on any part of the outside or inside of said building, except of such color, size and style or in such places upon or in said building, as shall be designated by said Landlord.

(g) All lettering on doors or windows shall be ordered and done by the Landlord's painter at the expense of the lessee.

(h) No machinery of any kind will be allowed to be operated on the premises without the written consent of the Landlord.

*Exhibits to Affidavit of Henry S. De Rees.*

619

(i) No tenant shall do or permit anything to be done in said premises, or bring or keep anything therein, or permit anything to be brought or kept therein, which shall in any way increase the rate of fire insurance on said building, or on the property kept therein; nor use the demised premises, or any part thereof, nor suffer or permit their use to any business of such a character as to increase the rate of fire insurance on said building or on the property kept therein.

(j) The Tenant covenants and agrees not to do or permit anything to be done in or about said premises, or bring or keep anything therein, or permit anything to be brought or kept therein, which shall in any way conflict with the Orders, Ordinances, Regulations, or Rules of the State or any Department thereof, the Municipality of the City of New York, or any Department thereof, or of any public or municipal authority, or of the New York Board of Fire Underwriters, or the requirements of any policy of fire insurance upon said building, or upon any property contained therein.

620

(k) The Landlord shall have power to prescribe the weight and position of iron safes, and they shall, in all cases, stand on two-inch thick strips to distribute the weight, and all damages done to the building by taking in or putting out a safe, or during the time it is in or on the premises, shall be repaired at the expense of the Tenant. Safes shall be moved only after 5 o'clock P. M., and no safe will be allowed to be moved upon the elevators, and safes

621

shall only be moved by competent persons acceptable to the Landlord.

(l) The Landlord shall not be responsible to any Tenant or other person, for any loss of property from said leased premises, or damage done to furniture or effects, however occurring, whether said loss or damage occur or be done through or by any employees, or by any other person whomsoever.

(m) The Landlord shall have the right to enter any of the leased rooms, at reasonable hours in the day, to exhibit the same to applicants to hire and to put up upon them the usual notice "To Let," which said notice shall not be removed by any Tenant during the 6 months next preceding the time of expiration of the lease of the premises.

(n) Nothing shall be thrown by the Tenants, their clerks or servants, out of the windows or doors, or down the passages of the building, and Tenants shall not make or permit any improper noises in the building, or interfere in any way with other Tenants, or those having business with them. Nor shall any animals or birds be brought or kept in or about the building.

(o) The lessee shall not use the premises, nor any part thereof, nor permit the same to be used for the business of stenography, typewriting, or other copying or similar occupation, or permit any employee to carry on such business in or from the premises.



*Exhibits to Affidavit of Henry S. De Rees.*

625

(p) The use of the elevator for moving purposes is subject to the consent of the Landlord first to be obtained therefor.

(q) No illuminating oil or fluid shall be used or kept on the premises, and no stove or other heating apparatus employed in the rooms; nor shall any shades be used other than those supplied by the lessor, or awnings permitted, unless first approved by the lessor.

(r) The Landlord reserves the right to make such other rules and further rules and regulations as, in the judgment of the Landlord, may from time to time be needful for the safety and protection of the premises, and its care and cleanliness, and for the preservation of good order therein, which rules and regulations, when so made, shall have the same force and effect as if originally made a part of this lease.

626

SEVENTH: The said Tenant agrees that the said Landlord and representatives, shall have the right, during the term, to enter into and upon said premises, or any part thereof, or any part of said building, at all reasonable hours, for the purpose of inspecting the same, to see that the covenants on the part of the Tenant are being kept and performed, and of examining the same, or making such repairs, alterations, additions or improvements therein as may be necessary for the safety, preservation or improvement thereof, or which the Landlord may for any reason deem desirable. But the said Tenant shall not be entitled to any damages or rebate on

627

account of the making of any repairs, alterations, improvements or enlargements of said building, nor shall the Tenant be relieved from liability under this lease in consequence thereof.

629 EIGHTH: The Tenant having deposited with the Landlord the sum of \_\_\_\_\_ Dollars, as security for the payment of the rent and performance of the covenants herein contained on the part of the Tenant, and as an inducement to the Landlord to enter into this lease upon the terms and covenants herein contained, it is expressly understood and agreed that for special and peculiar reasons applicable to this lease, the Landlord shall be entitled to hold and retain the said deposit in the event of any breach on the part of the Tenant in respect to any of the covenants herein contained, without regard to the amount of damage suffered by the Landlord in consequence of such breach, but that if the Tenant shall carry out and perform all the covenants and agreements required to be carried out and performed by the Tenant, then at the expiration of the time herein limited for the term of this lease the said deposit shall be returned to the said Tenant.

630 NINTH: It is further agreed that, in case the said demised premises shall be deserted or vacated, or in the event of the insolvency of the Tenant, either before or after the commencement of the term, or if default shall be made in the payment of rent, or any part thereof, at the time specified herein, or if default shall be made in the performance of any of

the covenants and agreements, conditions, rules or regulations herein contained or hereafter established, as herein provided, on the part of the Tenant, this lease (if the Landlord so elect) shall become null and void thereupon, and the Landlord shall have the right to re-enter or repossess the said premises, either by force, summary proceedings, surrender or otherwise, and dispossess and remove therefrom the Tenant, or other occupants thereof, and their effects, without being liable to any prosecution therefor, and to hold the same as if this lease had not been made; and in such case, the Landlord may, at his option, re-let the premises, or any part thereof, as the agent of the Tenant, and the Tenant agrees to pay the Landlord the difference, as ascertained, from time to time, between the rents and sums hereby reserved and agreed to be paid by the Tenant and those otherwise received, on account of rents of the demised premises, during the residue of the term remaining at the time of re-entry or repossession, less all expense of re-entry, removal and reletting. The Tenant hereby expressly waives the service of notice of intention to re-enter or of instituting legal proceedings to that end.

632

TENTH: In addition to any other legal remedies, for violation, or attempted or threatened violation, by or on the part of the Tenant, or any one holding or claiming under him, of any of the covenants herein contained, the same shall, in addition to all other legal remedies, be restrainable by injunction.

633

ELEVENTH: The said Landlord covenants that the said Tenant, on paying the said yearly rent, and

performing the covenants aforesaid, shall and may peaceably and quietly have, hold and enjoy the said demised premises, for the term aforesaid.

TWELFTH: The consent of the Landlord, in any instance, to any violation of the terms of this lease, or the receipt of rent with knowledge of any breach, shall not be deemed to be a waiver as to any breach of any covenant or condition herein contained, nor shall any waiver be claimed as to any provision of this lease unless the same be in writing, signed by the Landlord or its authorized agent.

635 THIRTEENTH: This lease shall be subordinate to any mortgage or mortgages, which shall, at any time, or from time to time, be placed upon said premises, or any part thereof.

FOURTEENTH: The covenants herein contained shall bind and inure to the benefit of the parties hereto, and their legal representatives and assigns.

636 FIFTEENTH: The Tenant expressly waives all right of redemption under secs. 2256 and 2257 of the Code of Civil Procedure, and the acts amendatory thereof or supplemental thereto, relating to the redemption of real property after a warrant to dispossess shall have been issued, or after a judgment in an action of ejectment shall have been made and entered, as well as under any and all other provisions of law which may hereafter be enacted.

SIXTEENTH: And the parties hereto further mutually agree that this lease shall be taken and considered as merging and embodying within its terms any and all conversations, agreements and negotiations prior to the execution and delivery thereof.

*Exhibits to Affidavit of Henry S. De Rees.*

637

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed the day and year first above written.

THE EQUITABLE LIFE ASSURANCE  
SOCIETY OF THE UNITED STATES,  
By John Halleron Agent (L. S.)  
DAVID COSTAGUTA & Co.,

H. S. De Rees,  
Member of said firm. (L. S.)

In presence of:  
H. C. RENTON.

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EXHIBIT B.

638

Feb 22 1918

J BDDE 57  
BAIRES 11

LCD DEREES NYK

BEFORE LEAVING STATES AWAIT OUR  
TODAYS LETTER

COSTAGUTA

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EXHIBIT C.

Mar 23, 1919

L DF BDDE 130  
BAIRES 16

639

LCD DEREES NEW YORK

OUR REPRESENTATIVE BRUGNAGO  
STARTS TOMORROW FROM VALPARAISO  
VIA PANAMA PLEASE WAIT HIM

COSTAGUTA

640

*Exhibits to Affidavit of Henry S. De Rees.*

## EXHIBIT D.

	Style No.	Case No.
	93	823
	5120	804
	8	5087
	8	5092
	8	5024
	1138A	2962
	"	2932
	1183B	2961
	8	6294
641	93	1152
	5140	1025
	105	592
	75	355
	8	5004
	Vain	5555
	115	1 Cajon
	326	5022
	"	5036
	326	5093
	"	5090
	147D	2753
	105	Lot 173-1/2 Doz.
642		LEON GRUMET

## EXHIBIT E.

AMERICAN EUROPEAN TRADING CORP'N  
22 White Street,  
New York City.

New York,

February 26th, 1920.

Delivered the following goods, to be repacked  
for export:

#5004, 5024, 5092, 6294, 5555, 592, 1025, 804, 644  
2753, A.B.C. 2432, 1152, total 14 cases Hosiery.

*Repacking will be made in the following manner:*

- (a) Contents of cases #5004, 5024, 5092, 6294, of  
style 008 Children's blk. Cotton Hose, more 63  
doz. of same style actually in cases A & C, will  
be packed in *1 doz. paper package, per every  
size*, with labels outside the package showing  
the style and size.

This style, whole 540 doz. will be packed after  
in 3 export cases of 180 doz. each in the fol-  
lowing assortment:

646

*Exhibits to Affidavit of Henry S. De Rees.*

	Case #1	#2	#3		
Size 5	3	3	2		
5½	9	9	10	marks	
6	10	10	10		
6½	12	12	12		
7	15	15	14	A. E. T. C.	#1/3
7½	22	23	23		
8	25	25	25	M	
8½	30	30	29		
9	26	26	27		
9½	28	27	28	Buenos-Aires.	

647

(b) Case #4 will contain 644 doz. of style 115, Children's black & white cotton socks, actually in cases 2432 & A.

This goods are already in paper packages. Repairs only—packages in bad conditions, and put new labels in Spanish instead of English.

Marks

A. E. T. C.
M

Buenos  
Aires

and 253 Children's Cot. socks actually in cases 5555. If not, packed this 253 doz. in paper packages with labels indicating the style and size, and color.

each dozen in a paper package, and 4 dozen of same color but difference size in a bundle. Label on the bundle indicating contents (style, sizes & Color).

(c) Case #5 will contain

648

Style	75 (actually € B)	84	dz.
"	93	"	B 40 "
"	945	"	5555 27 "
"	9500	"	5555 54½ "

Style 75 is already in paper packages with Spanish labels.



*Exhibits to Affidavit of Henry S. De Rees.*

649

Style 93 is to be packed in one doz. packages of every size, with labels indicating style, size and color.

Style 945, if not, to be packed in one doz. package with labels indicating style, color and size.

Style 9500, to be packed same as above.

marks: #5

A. E. T. C.
M

650

Buenos Aires.

- (d) Case #6—all contents of case #592. 264 doz. Ladies Hose. If not, to be packed in one doz. package, with labels indicating size, style & Color.

Marks: #6

A. E. T. C.
M

Buenos Aires.

651

- (e) Case #7—Style 105 actually in case 1152, 173 dz. to be packed in one doz. package with labels indicating style, size and color.

652

*Exhibits to Affidavit of Henry S. De Rees.*

Marks:

#7

A. E. T. C.
M

Buenos Aires.

- (f) Case #8 Style 5140 actually in case #1025—300 dz. Ladies Hose, black, to be packed in one doz. package, with labels indicating style, size & Color.

Marks:

#8

653

A. E. T. C.
M

Buenos Aires.

- (g) Case #9—Style 5120 actually in case #804—312 doz. same packing as above # style 5140.

Marks:

#9

A. E. T. C.
M

Buenos Aires.

- 654 (h) Case 10—Style 106 Ladies Hose—Russian Calf. 162½ dz. actually in cases

#2753	100	dz.
#B	2½	"
A	27½	"
1152	32½	162½ doz.

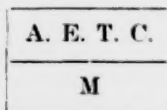
*Exhibits to Affidavit of Henry S. De Rees.*

655

to be packed in one doz. packages, with labels indicating style, size & Color.

Marks:

#10



Buenos Aires.

*Spanish labels furnished by us.*

*Good export cases, strapped & scaled. If possible, use our old cases.*

*For packages & Bundles, light but strong paper.*

*Before packing, give us the following samples:*

656

*Total*

Style 008: 1 pair size 4

1 " " 6½

2 " " 9..... 4

" 115: 1 " " 4½ white

1 " " 7 black

1 " " 5 " ..... 3

" 75: 1 " " 8½ black

1 " " 9 white

1 " " 9½ black ..... 3

" 93: 1 " " 8½

1 " " 9

1 " " 9½..... 3

657

" 3100: 1 pair Pink Size 4

1 " white " 5

1 " tan " 6

1 " asst. " 7

1 " black " 8

658

*Exhibits to Affidavit of Henry S. De Rees.*


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		1	"	blue	"	8.....	6
"	945:	1	"	of each size, black.....			3
"	9500:	1	"	of each size.....			3
"	105:	1	"	size 8, black,			
		1	"	"	8½	"	
		1	"	"	8	Cordovan	
		1	"	"	8½	"	
		1	"	"	8	white	
		1	"	"	9	mist	
		1	"	"	9½	steel grey	
		1	"	"	8½	mist	
		1	"	"	9	steel grey .....	9
659	"	5140:	1	"	of each size.....		3
	"	5120:	1	"	"	"	3
	"	106:	1	"	size 8	dark bronze,	
		1	"	"	8½	black	
		1	"	"	9	black	
		1	"	8	Russian calf,.....		4

---

44  
doz.

Before packing, take the weight *net* of each style separately, and Gross of each case.

AMERICAN EUROPEAN TRADING CORP'N.

660

**EXHIBIT F.**

Codes A1: A B C 4th Edition  
 —LIEBER'S STANDARD—  
 Gallesi & Private.

**Telegramas:**

DAVIDCOS—BUENOS AIRES  
 COSTAGUTA—NEW YORK.

HOSIERY DEPARTMENT OF  
 DAVID COSTAGUTA & CIA.,

of BUENOS AIRES,

NEW YORK,

662

**Importadores—Representantes.**

HOME OFFICE: 395 Broadway  
 1380 Calle Alsina Tel. 1203 Franklin.  
 Buenos Aires.

PARIS—MILAN.  
 Montevideo—Valparaiso,  
 Asuncion.

663

664 *Exhibits to Affidavit of Henry S. De Rees.*

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**EXHIBIT G.**

Codes A1: A B C 4th Edition  
—LIEBER'S STANDARD—  
Gallesi & Private.

Telegramas:

**DAVIDCOS—BUENOS AIRES**  
**COSTAGUTA—NEW YORK.**

Bill No. 1167

**HOSIERY DEPARTMENT OF**  
**DAVID COSTAGUTA & CIA.,**  
of Buenos Aires.

**REMOVED**  
**TO**

665 Importadores—Representantos

22-24 White St.

**HOME OFFICE:**  
1380 Calle Alsina  
Buenos Aires

**NEW YORK,**  
June 6, 1919.  
Tel 430 Canal.

**PARIS—MILAN**  
**Montevideo—Valparaiso**  
Asuncion

**Messrs. A. Kommel & Sons,**  
519 Broadway,  
New York City.

**To DAVID COSTAGUTA & CIA., Dr.**

**Terms: Net Cash, no discount.**

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The foregoing affidavits and exhibits submitted in reply on the hearing for Receiver and injunction and in support thereof and in support of the jurisdiction of the District Court, are marked filed U. S. District Court, S. D. of N. Y., April 7, 1920.

**Opinion.**

667

**UNITED STATES DISTRICT COURT.****SOUTHERN DISTRICT OF NEW YORK.****HENRY S. DEREEs**

against

**DAVID COSTAGUTA, MARCOS A. ALGIER, ALEJANDRO SASSOLI, EUGENIO OTTOLENGHI,** individually and as copartners in business composing the copartnership of David Costaguta & Company, Renado Taffell and the American-European Trading Corporation.

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**FREDERICK M. CZAKI** for the Plaintiff.**WALTER H. MERRITT,** Appearing specially for David Costaguta & Company.**J. ARD HAUGHWOUT** for American-European Trading Corporation.**MOTION FOR A RECEIVER AND AN INJUNCTION.**

**LEARNED HAND, D. J.:** This is not a case where the articles do not contain any provision as to who shall conduct the liquidation; Article Ten provides for dissolution by three months' notice and Articles Eleven and Twelve for the methods of liquidation. Under Article Eleven, if either party demand it, as DeRees did, the merchandise must be "liquidated,"

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*i. e.*, sold, and David Costaguta & Company must pay him his share when ascertained, with interest, in four installments. He must himself "give his co-operation up to the moment the liquidation be terminated."

671

The first question is whether during the liquidation period DeRees should have a joint possession with David Costaguta & Company. I do not think that this can be determined by considering at what time David Costaguta & Company became "sole owners" of the "business," though on the whole it seems most probable that that was immediately on dissolution and not at the completion of liquidation. They might, however, become owners only at the later period and still have the right to possession meanwhile. My reason for thinking that they did have immediate possession is that both Articles Eleven and Twelve show that they were eventually in any case to get the whole "business," and that in so far as the business involved anything but "merchandise" in the nature of things, they became owners at once. This is because they were not to divide the surplus with DeRees in specie, but under both articles it was to be treated as theirs, and they became indebted to him for his final share, payable in installments with interest. That effectively precludes any division. Now as they were not to divide the proceeds it would be an unexpected purpose which should contemplate his having joint possession of merchandise pending its sale, whose proceeds he was not to share. Moreover, under Article Twelve, David Costaguta & Company were to have ownership and possession at once; yet the only difference between the two articles is that under Ar-

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ticle Twelve the merchandise was to be taken at its book value, while under Article Eleven it was to be sold. I do not readily perceive why that single difference should have given DeRees an intermediate joint possession until the value was ascertained in this alternative way. The argument drawn from the phrase, "common accord," is not valid; it refers only to the striking of an account between the parties.

Moreover, I regard the phrase that DeRees should lend "his coöperation" as putting the question beyond any doubt. It is not appropriate language to describe joint possession, but rather that DeRees, notwithstanding that the firm was charged with the duty to liquidate, was himself bound to help actively. Finally it is to be noted that for over three months DeRees allowed the firm to conduct the liquidation without any protest, a pretty convincing indication that he supposed it was their right. I think for these reasons that, regardless of when David Costaguta & Company were to become sole owners, they were at the least liquidating partners and entitled to sole possession, assuming that there was any partnership at all, which I doubt. If so, DeRees must show some reason why a court should take out of their hands the possession so granted, *Meyer v. Reimers*, 30 Misc., 307, 49 App. Div., 638; *Hoffman v. Hauptner*, 135 App. Div., 148, and substitute a receiver who shall hold the assets against the final settlement of the accounts whether here or in Argentina, *Chesley v. Morton*, 9 App. Div., 461. There must be some abuse of trust to secure such relief, for normally it would be the right of David Costaguta & Company to sell the merchandise wher-

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675

ever it is, withdraw the proceeds to Argentina and there to state the account. Nor is it any reason to suggest that this will compel DeRees to go to Argentina if he would challenge the account, or get any other relief. That is precisely the jurisdiction in which the parties should adjust their grievances if they have any. The contract was there made, most of it was there to be performed, and the parties were all in business there when it was made. Certainly, I shall assume that the Argentine courts are as competent and impartial for that purpose as our own.

- 677 There are but two such grounds suggested which might justify the interposition of this court, (1) the mingling of funds by David Costaguta & Company, (2) the fraudulent transfer of firm assets. There is no suggestion anywhere in the contract that the funds of the Hosiery Section must at any time be kept separate from the general assets of David Costaguta & Company; as it was a branch of the business of David Costaguta & Company there was every reason for them not to do so. The opposing affidavits assert that the practice of commingling funds had been uniformly followed from the outset, and Article Seven clearly shows that the cash was to be kept not by the supposititious firm, but by David Costaguta & Company alone. If so,
- 678 it would be quite gratuitous to suppose that they must keep it in separate accounts, and whatever may have been the proper practice before dissolution, upon dissolution David Costaguta & Company became, prospectively in any event, "the sole owners of the business," and their right was absolute to mingle the assets with their own. They were ac-

countable, of course, to DeRees, but he had no lien upon the assets which was not to terminate, if it existed at all, as soon as all the merchandise was sold.

As to the fraudulent conveyance, the reasons just given are answer enough, but I prefer to consider the merits, as it involves so serious a charge. The bare allegation of fraud will not serve; there must be some evidence. The firm had experienced irritating annoyances in having the status of a non-resident, and the organization of a domestic corporation was a perfectly legitimate way out. The substance of the ownership remained quite as before, but the assets were protected from attachments which had in the past caused waste. They were or soon would be the owners, and could never be called upon to turn over to DeRees any part of the assets in kind. Why it should be thought, therefore, a fraud for an entirely solvent grantor to turn such assets to a corporation in which it owned all the stock I cannot conceive. As matter of law it would not have been such even if they had been insolvent, *Re Braue*, 248 Fed. R., 55; as a matter of intent, there is not the slightest ground for saying so, except DeRees's personal opinion.

680

The motion for a receiver and an injunction is denied.

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#### MOTION TO DISMISS THE SERVICE AND VACATE THE ORDER FOR SUBSTITUTED SERVICE.

This question must be decided upon the bill alone, and is, whether DeRees may proceed under Section Fifty-seven of the Judicial Code upon al-

683

legations that pending liquidation David Costaguta & Company has fraudulently conveyed a part of the partnership assets to avoid DeRees's lien. That a partner has usually no rights except a bill for an accounting, pending the partnership, scarcely needs any show of citation. I must take it, however, upon this motion that, pending liquidation, the liquidating partner, for the purpose of defrauding the plaintiff, has transferred the firm assets to another. If so, the plaintiff has lost his rights *in rem* and is relegated to an action against the firm of David Costaguta & Company. If the liquidation included turning over to the plaintiff his share of the assets when converted into cash, I should agree that his lien, as it is generally called, entitled him to protection of those assets in the hands of the liquidator, and that he could by a suit under Section Fifty-Seven of the Judicial Code, follow the assets and insist upon their sequestration by a court, not of course for delivery to him, but at least to await the statement of the accounts and distribution in accordance therewith. No partner should be compelled in the face of such an effort to trust to the continued solvency of the liquidating partner; *Holmes v. Gilman*, 138 N. Y., 369; the right would be clear against the grantee and the grantors might be brought in by substituted service to conclude their rights in the fund.

684

However, this contract, always assuming it to create a partnership, is not of the usual kind. It permits the liquidating partner, as I have said, to take over all the assets as sole owner and to pay his share to the other partner in installments, with interest. In so providing I think that the partner's

rights *in rem* were changed and that, in the absence of insolvency, the transfer could not be a fraudulent conveyance. The liquidating partner might deal as he pleased with his own so long as the transfer left him solvent. The allegations in the bill that the purpose of the transfer was to prevent the plaintiff from recovering his share, must therefore yield, since it appears that they are necessarily without basis.

Now it is quite true that under the contract as pleaded in the bill, David Costaguta & Company are not to become the sole owners of the business until the liquidation is completed, and possibly this is true under the contract itself. But I think that it makes no difference for this purpose whether they were to take over the business at dissolution or at the completion of the liquidation. In no event could the plaintiff ever receive any share in the assets as such, for in either case he is confined to his rights *in personam* against the firm upon their undertaking to pay in installments his share as eventually settled by liquidation. The only excuse for allowing him to proceed *in rem* would be his right to insist at some time upon the application of this particular property to that payment at some future time, a right which at no time can he possess. I am of course aware that this disposition would end the case in this jurisdiction, but that is precisely the result which I think should follow. There seems to me to be no excuse for compelling these defendants to litigate here what should be settled in Argentina, or for impeding them in the settlement, which is progressing, so far as I can see, quite in accordance with their agreement.

688

*Opinion.*

Motion to vacate service and order of service granted.

L. H.,  
D. J.

Marked filed April 7, 1920.

**Objections and Exceptions to Proposed Decrees.**

IN THE

DISTRICT COURT OF THE UNITED STATES,

689

FOR THE SOUTHERN DISTRICT OF NEW YORK.

HENRY S. DE REES,  
Plaintiff,

against

DAVID COSTAGUTA, MARCOS A.  
ALGIERS, ALEJANDRO SASSOLI,  
EUGENIO OTTOLENGHI, indi-  
vidually and as copartners in  
business composing the copart-  
nership of David Costaguta &  
Company, Renado Taffell and  
the American-European Trad-  
ing Corporation,

Defendants.

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AND NOW comes the plaintiff by Messrs. Erwin,  
Fried & Czaki, his solicitors, and shows to the Court

that on the 8th day of April, 1920, there was served upon his solicitors by Walter H. Merritt, Esq., representing the non-resident defendants, a notice of motion to settle the decree of the Court on the opinion rendered and filed by the Court on April 7th, 1920, in so far as it affects said non-resident defendants, and to which said notice he attached the form of his proposed decree, a copy of which is hereto attached, marked "A"; and that on the said 8th day of April, 1920, there was served upon plaintiff's said solicitors by Messrs. Esselstyn & Haughwout, representing the resident defendants herein, a notice of motion to settle the decree on the said opinion of the Court, so far as it affects the said resident defendants, and to which said notice they attached the form of their proposed decree, a copy of which is hereto attached, marked "B."

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AND thereupon and before the settlement of said decrees by the Court comes now the plaintiff, by his said solicitors of record, and objects to the forms and to the substance of said decrees so proposed by said respective solicitors for said respective defendants drafted upon the opinion of the Court, on the following grounds:

(1) That said proposed decrees, in so far as they vacate and annul the service of subpoena on the resident defendants, and in so far as they vacate and annul the order of the Court of March 16th, 1920, for service on the non-resident defendants by publication and the service of said order upon the persons in possession of the property in the district sought to be subjected to plaintiff's claim set

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forth in the Bill, deprive the plaintiff of a property right without due process of law, in violation of the Constitution and laws of the United States.

(2) That the said decrees in the same respect unlawfully deprive the plaintiff of his constitutional right to invoke the jurisdiction of this Court in the controversy in this cause by the methods and processes provided by law whereby he is entitled to invoke and make the jurisdiction of the Court effective by such processes and means, as will protect his property rights, as well as his rights as a citizen of the United States to litigate said claim in this Court.

(3) That the said decrees by the dismissal of plaintiff's Bill at this stage of the proceedings, and where the defendants have only entered their appearances specially to the jurisdiction, and before the plaintiff under the rules of practice and procedure, had an opportunity to obtain evidence under subpoena and regular processes and to produce evidence and meet evidence under examination and cross-examination, deprive the plaintiff of that due process of law secured to him by the Constitution of the United States and of the means to enforce a property right by due process of law in a Court of the United States having jurisdiction of the subject-matter and of the parties.

(4) That the said decrees by vacating and declaring null and void the service of subpoena on the resident defendants, and the order for service by publication on the non-resident defendants, and of



*Objections and Exceptions.*

697

notice thereof to persons in possession of the property in the district on which plaintiff, in his Bill, asserts a claim or lien, deprive the Court of the exercise of the jurisdiction of the person and of the subject-matter in this cause which it should lawfully exercise, and deprive the plaintiff of his lawful right to have the Court exercise that jurisdiction.

(5) That the said decrees make the Court dismiss the bill at a stage of the proceedings at which it could not be lawfully dismissed without stating the reason for the dismissal, such as want of jurisdiction or other cause sufficient to deprive the plaintiff of his day in Court. 698

(6) That the said decrees so proposed deprive the plaintiff of his right to have the property, a claim or right to or lien upon which he asserts in his Bill conserved and protected by this Court and by the Circuit Court of Appeals by such interlocutory orders of injunction or Receiver or other protective order usual to Courts of equity, and to have a review of such orders as are made, under the statutes providing for review on appeal of interlocutory orders by the Court of Appeals, at and prior to the disposition of the cause, and this Court is without lawful power to so dispose of the cause. 699

(7) WHEREFORE, plaintiff respectfully objects to the said proposed forms of decrees, or to any decree which violates his rights as he conceives them to be in the particulars above set forth, and without waiver of any right of objection he may

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*Objections and Exceptions.*

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have on other grounds, or of the failure of the Court to give the relief prayed for by him.

Dated, New York, April 10th, 1920.

ERWIN, FRIED & CZAKI,  
Solicitors for plaintiff,  
15 William Street,  
New York City,  
Borough of Manhattan.

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702

*Objections and Exceptions.*

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"A."

At a Stated Term of the United States District Court for the hearing of Motions, held in the United States Post Office Building, in the Borough of Manhattan, City of New York, on the day of April, 1920.

Present :

HON. LEARNED HAND,  
*Justice.*

704

HENRY S. DE REES,  
Plaintiff,

against

DAVID COSTAGUTA, MARCOS A.  
ALGIERS, ALEJANDRO SASSOLI,  
EUGENIO OTTOLENGHI, indi-  
vidually and as copartners in  
business composing the copart-  
nership of David Costaguta &  
Company, Renado Taffell and  
the American-European Trad-  
ing Corporation,

Defendants.

Order  
Equity 17-201

705

The order to show cause, made by the Hon. Learned Hand, United States District Judge, dated the 23rd day of March, 1920, directing the plaintiff to show cause why an order should not be made va-

*Objections and Exceptions.*

707

eating and setting aside the order made by said Hon. Learned Hand, dated the 16th day of March, 1920, directing that substituted service of the subpoena be made on the defendants David Costaguta, Marcos A. Algiers, Alejandro Sassoli, Eugenio Ottolenghi, individually and as copartners in business composing the copartnership of David Costaguta & Company, in the manner therein provided and to have declared null and void certain alleged services of the subpoena on said defendants, certified by Thomas D. McCarthy, United States Marshal, to have been made by him, came on to be heard at this term and was argued by counsel, said defendants having appeared specially for the purposes therein stated, and thereupon, upon consideration thereof, it was

ORDERED, ADJUDGED AND DECREED that the said order made by the Hon. Learned Hand, United States District Judge, dated the 16th day of March, 1920, be and the same is hereby vacated, quashed and set aside in all respects, and all acts done thereunder either by the plaintiff or by said Thomas D. McCarthy, United States Marshal, be and the same hereby are declared null and void; and it is

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FURTHER ORDERED, ADJUDGED AND DECREED, that the alleged service of the subpoena certified by Thomas D. McCarthy, United States Marshall, in and by his certain certificate dated the 11th day of March, 1920, to have been made by him "upon the within defendant and David Costaguta Co.," in the manner therein stated, be and the same hereby is declared null and void and of no effect; and it is

*Objections and Exceptions.*

709

FURTHER ORDERED, ADJUDGED AND DECREED, that the bill of complaint herein be and the same hereby is dismissed as to the defendants David Costaguta, Marcos A. Algiers, Alejandro Sassoli and Eugenio Ottolenghi, individually and as copartners in business composing the copartnership of David Costaguta & Company.

Enter,

*U. S. D. J.*

710

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712

*Objections and Exceptions.*

"B."

At a Stated Term of the United States District Court for the hearing of motions, held in the United States Post Office Building, in the Borough of Manhattan, City of New York, on the day of April, 1920.

Present:

Hon. LEARNED HAND,  
*Justice.*

713

HENRY S. DE REES,  
Plaintiff,

against

DAVID COSTAGUTA, MARCOS A.  
ALGIERS, ALEJANDRO SASSOLI,  
EUGENIO OTTOLENGHI, indi-  
vidually and as copartners in  
business composing the copart-  
nership of David Costaguta &  
Company, Renado Taffell and  
the American-European Trad-  
ing Corporation,

Order  
Equity 17-201

714

Defendants.

The order to show cause, made by the Hon. Learned Hand, United States District Judge, dated the 13th day of March, 1920, and obtained by the

*Objections and Exceptions.*

715

plaintiff herein, directing the defendants to show cause why an order should not be made appointing a Receiver *pendente lite* and granting an injunction during the pendency of this action, and for the other relief prayed for therein, came on to be heard at this term and was argued by counsel and thereupon, upon consideration thereof, it was

ORDERED, ADJUDGED AND DECREED that the motion made by the plaintiff, in and by said order to show cause, be and the same hereby is denied in all respects; and it is

FURTHER ORDERED, ADJUDGED AND DECREED, that the temporary restraining order contained in said order to show cause be and the same hereby is vacated, annulled and cancelled in all respects; and it is

FURTHER ORDERED, ADJUDGED AND DECREED, that the bill of complaint herein be and the same hereby is dismissed.

Enter,

*U. S. D. J.*

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Service of the foregoing objections is admitted April 10, 1920, by Walter H. Merritt, Esq., and Messrs. Esselstyn & Haughwout, the attorneys for all of the defendants appearing specially on April 10, 1920, and are marked filed U. S. District Court, S. D. of N. Y., April 10, 1920.

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**Notice of Settlement of Proposed  
Decree.**

IN THE  
DISTRICT COURT OF THE UNITED STATES,  
FOR THE SOUTHERN DISTRICT OF NEW YORK.

HENRY S. DE REES,  
Plaintiff,

vs.

DAVID COSTAGUTA *et al.*,  
Defendants.

Notice of  
Settlement  
Equity 17-201

719

*Sirs:*

PLEASE TAKE NOTICE, that the annexed order will be presented for settlement to the Hon. Learned Hand, United States District Judge, at the office of the Clerk of this Court, in the Post Office Building, in the Borough of Manhattan, City of New York, on the 9th day of April, 1920, at 9:30 in the forenoon.

Dated, New York, April 8, 1920.

ESSELSTYN & HAUGHWOUT,  
Proctors for Defendants Renado Taffell  
and American-European Trading Corp.,  
2 Rector Street,  
Borough of Manhattan,  
New York City.

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To:  
ERWIN, FRIED & CZAKI, Esqs.,  
Proctors for plaintiff,  
15 William Street,  
New York City.



**Final Decree.**

721

At a Stated Term of the United States District Court for the Hearing of Motions, held in the United States Post Office Building, in the Borough of Manhattan, City of New York, on the 10th day of April, 1920.

Present :

HON. LEARNED HAND,  
*Justice.*

HENRY S. DE REES,  
Plaintiff,

against

DAVID COSTAGUTA, MARCOS A. ALGIERS, ALEJANDRO SASSOLI, EUGENIO OTTOLENGHI, individually and as copartners in business composing the copartnership of David Costaguta & Company, Renado Taffell and the American-European Trading Corporation,  
Defendants.

722

Order  
Equity 17-201

The order to show cause, made by the Hon. Learned Hand, United States District Judge, dated the 13th day of March, 1920, and obtained by the plaintiff herein, directing the defendants to show cause why an order should not be made appointing a receiver *pendente lite* and granting an injunction

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during the pendency of this action, and for the other relief prayed for therein, came on to be heard at this term and was argued by counsel and thereupon, upon consideration thereof, it was

ORDERED, ADJUDGED AND DECREED, that the motion made by the plaintiff, in and by said order to show cause, be and the same hereby is denied in all respects; and it is

FURTHER ORDERED, ADJUDGED AND DECREED, that the temporary restraining order contained in said order to show cause be and the same hereby is vacated, annulled and cancelled in all respects; and it is

FURTHER ORDERED, ADJUDGED AND DECREED, that the bill of complaint herein be and the same hereby is dismissed.

LEARNED HAND,

*U. S. D. J.*

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The foregoing decree is marked filed U. S. District Court, S. D. of N. Y., April 10, 1920.

**Notice of Settlement of Proposed  
Decree.**

727

IN THE  
DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF NEW YORK.

HENRY S. DE REES,  
Plaintiff,

vs.

DAVID COSTAGUTA *et al.*,  
Defendants.

Notice of  
Settlement  
Equity 17-201

728

*Sirs:*

PLEASE TAKE NOTICE, that the annexed order will be presented for settlement to the Hon. Learned Hand, United States District Judge, at the office of the Clerk of this Court, in the Post Office Building, in the Borough of Manhattan, City of New York, on the 9th day of April, 1920, at 9:30 in the forenoon.

Dated, New York, April 8, 1920.

WALTER H. MERRITT,  
Appearing specially herein for defend-  
ants David Costaguta, Marcos A.  
Algiers, Alejandro Sassoli, and Eu-  
genio Ottolenghi, individually and  
as copartners in business, etc.,

729

54 Wall Street,  
Borough of Manhattan,  
New York City.

730 To:  
 ERWIN, FRIED & CZAKI, Esqs.,  
 Proctors for plaintiff,  
 15 William Street,  
 New York City.

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**Final Decree.**

At a Stated Term of the United States District Court for the Hearing of Motions, held in the United States Post Office Building, in the Borough of Manhattan, City of New York, on the 10 day of April, 1920.

Present:

731 HON. LEARNED HAND,  
*Justice.*

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HENRY S. DE REES,  
 Plaintiff,

against

DAVID COSTAGUTA, MARCOS A.  
 ALGIERS, ALEJANDRO SASSOLI,  
 EUGENIO OTTOLENGHI, indi-  
 vidualy and as copartners in  
 business composing the copart-  
 nership of David Costaguta &  
 Company, Renado Taffell and  
 the American-European Trad-  
 ing Corporation,  
 Defendants.

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Order  
 Equity 17-201

732

The order to show cause, made by the Hon. Learned Hand, United States District Judge, dated

the 23rd day of March, 1920, directing the plaintiff to show cause why an order should not be made vacating and setting aside the order made by said Hon. Learned Hand, dated the 16th day of March, 1920, directing that substituted service of the subpoena be made on the defendants David Costaguta, Marcos A. Algiers, Alejandro Samsoli, Eugenio Ottolenghi, individually and as co-owners in business composing the copartnership of David Costaguta & Company, in the manner therein provided and to have declared null and void certain alleged services of the subpoena on said defendants, certified by Thomas D. McCarthy, United States Marshal, to have been made by him, came on to be heard at this term and was argued by counsel, said defendants having appeared specially for the purposes therein stated, and thereupon, upon consideration thereof, it was

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ORDERED, ADJUDGED AND DECREED that the said order made by the Hon. Learned Hand, United States District Judge, dated the 16th day of March, 1920, be and the same is hereby vacated, quashed and set aside in all respects, and all acts done thereunder either by the plaintiff or by said Thomas D. McCarthy, United States Marshal, be and the same hereby are declared null and void; and it is

735

FURTHER ORDERED, ADJUDGED AND DECREED, that the alleged service of the subpoena certified by Thomas D. McCarthy, United States Marshal, in and by his certain certificate dated the 11th day of March, 1920, to have been made by him "upon the within defendant and David Costaguta Co.," in the

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*Final Decree.*

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manner therein stated, be and the same hereby is declared null and void and of no effect; and it is

FURTHER ORDERED, ADJUDGED AND DECREED, that the bill of complaint herein be and the same hereby is dismissed as to the defendants David Costaguta, Marcos A. Algiers, Alejandro Sassoli and Eugenio Ottolenghi, individually and as copartners in business composing the copartnership of David Costaguta & Company.

LEARNED HAND,

*U. S. D. J.*

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The foregoing decree is marked filed U. S. District Court, S. D. of N. Y., April 10, 1920.

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**Order Allowing Appeal.**

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IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

HENRY S. DE REES,  
Plaintiff-Appellant,  
against

DAVID COSTAGUTA, MARCOS A.  
ALGIERS, ALEJANDRO SASSOLI,  
EUGENIO OTTOLENGHI, indi-  
vidually and as copartners in  
business composing the copart-  
nership of David Costaguta &  
Company, Renado Taffell and  
the American-European Trad-  
ing Corporation,  
Defendants-Appellees.

E 17-201

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The foregoing petition for appeal is hereby granted, and the claim of appeal as therein made is allowed upon the ground that the Bill of Complaint was dismissed for want of jurisdiction and that this Court, on the Bill, has no jurisdiction of the subject-matter and of the persons mentioned therein, and it is ordered that the appeal to the Supreme Court from the final decrees entered in the above entitled cause on the 10th day of April, 1920, be, and the same is allowed, and that a transcript of

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*Order Allowing Appeal.*

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the record, bill, appearances, affidavits and exhibits, orders, decrees, proceedings and papers, and opinion of the Court, upon which said decrees were made, duly authenticated, be sent to the Supreme Court.

Dated, New York, April 10th, 1920.

LEARNED HAND,  
*District Judge.*

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**Petition for Order Allowing Appeal.** 745

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

HENRY S. DE REES,  
Plaintiff-Appellant,  
against

DAVID COSTAGUTA, MARCOS A.  
ALGIERS, ALEJANDRO SASSOLI,  
EUGENIO OTTOLENGHI, indi-  
vidually and as copartners in  
business composing the copart-  
nership of David Costaguta &  
Company, Renad6 Taffell and  
the American-European Trad-  
ing Corporation,  
Defendants-Appellees.

E 17-201

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*To the Honorable, the Judges of the District Court  
of the United States, for the Southern District  
of New York:*

The above named appellant, conceiving himself aggrieved by the final decrees made and entered in the above entitled cause under date of the 10th day of April, 1920, wherein and whereby, among other things, the Bill of Complaint herein is dismissed, and it is ordered, adjudged and decreed as in said decrees is more fully set forth, doth hereby appeal to the Supreme Court of the United States, and he files herewith his assignment of errors and peti-

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tions this Court for an order allowing him to prosecute an appeal as against all of said defendants from said decrees direct to the Supreme Court under and according to the laws of the United States, in that behalf made and provided, upon the grounds and for the reasons that the appellant claims that he has been deprived of his rights under the constitution of the United States, as more particularly specified in said assignments of error and because the District Court of the United States for the Southern District of New York has refused to entertain jurisdiction of the Bill of Complaint and dismissed the same for alleged lack of jurisdiction of the subject-matter and of the parties defendant named in said Bill, and that a transcript of the record, bill, appearances, affidavits, exhibits, orders, opinion and decrees, proceedings and papers upon which said decrees were made, duly authenticated, may be sent to the Supreme Court.

Dated, New York, April 10th, 1920.

ERWIN, FRIED & CZAKI,

Solicitors for appellant.

Office and Post Office Address,

15 William Street,

New York City.

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750

The foregoing petition for and order allowing appeal are marked filed United States District Court, Southern District of New York, April 10, 1920, and service of copies thereof is admitted by Messrs. Es-selstyn & Haughwout, and Walter H. Merritt, Esq., April 10, 1920, as attorneys for all of the defendants appearing specially.

**Certificate of District Judge.**

751

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

HENRY S. DE REES,  
Plaintiff,

against

DAVID COSTAGUTA, MARCOS A.  
ALGIERS, ALEJANDRO SASSOLI,  
EUGENIO OTTOLENGHI, indi-  
vidually and as copartners in  
business composing the copart-  
nership of David Costaguta &  
Company, Renado Taffell and  
the American-European Trad-  
ing Corporation,  
Defendants.

E 17-201

752

The plaintiff having entered his appeal to the Supreme Court from the decrees of this Court entered the 10th day of April, 1920, vacating the order for service by publication on the non-resident defendants, and the service of subpoena on all the defendants, and dismissing plaintiff's bill as more particularly set forth in said decrees,

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I HEREBY CERTIFY that said decrees were entered solely because the case as made by the bill did not set forth a legal or equitable claim to or lien on

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*Certificate of District Judge.*

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the property in the district, of which this Court would have jurisdiction within the meaning of Section 57 of the Judicial Code, or in which this Court could render a judgment otherwise than a judgment *in personam* against the non-resident aliens who appeared specially and objected to the jurisdiction of the Court.

Dated, New York, April 10th, 1920.

LEARNED HAND,

*District Judge of the United States,  
for the Southern District of New  
York.*

755

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Service of the foregoing certificate on Messrs. Es-selstyn & Haughwout and Walter H. Merritt, Esq., attorneys for all of the defendants appearing specially, is admitted April 10, 1920, and said certificate is marked filed United States District Court, Southern District of New York, April 10, 1920.

756

**Assignments of Error.**

757

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

HENRY S. DE REES,  
Plaintiff-Appellant,  
against

DAVID COSTAGUTA, MARCOS A.  
ALGIERS, ALEJANDRO SASSOLI,  
EUGENIO OTTOLENGHI, indi-  
vidually and as copartners in  
business composing the copart-  
nership of David Costaguta &  
Company, Renado Taffell and  
the American-European Trad-  
ing Corporation,  
Defendants-Appellees.

E 17-201

758

AND NOW comes the plaintiff, the appellant here-  
in, and files the following assignments of error upon  
which he will rely in the prosecution of the appeal  
in the above entitled cause from the decrees entered  
herein on the 10th day of April, 1920, and avers  
that the United States District Court erred, in and  
by said decrees:

759

**FIRST.**

In holding that the plaintiff-appellant in and by  
his Bill of Complaint failed to assert a legal or

equitable title, or claim to or lien upon property in the district of which the Court had jurisdiction.

SECOND.

In holding that the claim asserted in plaintiff's said bill was an action which could only be enforced by an action *in personam* against the defendants, and could not be enforced against property of the copartnership in the district, known as the "Hosiery Department" of David Costaguta & Company, of which the plaintiff was a copartner, by service by publication under Section 57 of the Judiciary Code.

THIRD.

In vacating the service of the order of March 16, 1920, for service by publication upon the non-resident defendants, and declaring null and void everything done under it.

FOURTH.

In vacating the service of the said order of March 16, 1920, upon the resident defendants as persons in possession of the property in the District in and on which plaintiff asserted a claim and lien in his bill, and in vacating the entry of service of the subpoena upon said resident defendants.

FIFTH.

In and by vacating the order for service by publication as to the non-resident defendants, and vacating service of subpoena on the resident defendants, depriving the plaintiff of the processes of the

*Assignments of Error.*

763

Court by which he could assert and protect his property rights in the district, and assert his constitutional right to invoke and have exercised the jurisdiction of this Court having jurisdiction of the subject matter and of the controversy, and thus depriving plaintiff of the property rights asserted in said bill without due process of law.

## SIXTH.

In and by the dismissal of the bill as to the non-resident defendants for want of jurisdiction.

## SEVENTH.

764

In and by the dismissal of the bill as to the non-resident defendants for alleged failure to set forth a cause of action.

## EIGHTH.

In and by the dismissal of the bill as to the resident defendants for want of jurisdiction.

## NINTH.

In and by dismissing the bill as to the resident defendants for want of alleged failure to set forth a cause of action.

## TENTH.

765

In and by the dismissal of the bill as to the resident defendants because the non-resident defendants were indispensable parties.

## ELEVENTH.

In and by the dismissal of the bill on hearing on special appearance of the non-resident defendants before the time fixed by the order for publication for the non-resident defendants to appear, plead, answer or demur to the bill, and before it could be known that said defendants would not voluntarily appear, plead, answer or demur.

## TWELFTH.

767 In and by the dismissal of the bill as to the resident defendants on affidavits submitted by them going to the merits of the cause of action, on a special appearance of said defendants limited to the question of jurisdiction.

## THIRTEENTH.

768 In that it deprives the plaintiff of his right to have the property, a claim or right to or lien upon which he asserts in his bill, conserved and protected by this Court or by the Circuit Court of Appeals by such interlocutory orders of injunction or Receiver, or other protective order usual to Courts of equity, and to have a review of such orders as are made, under the statutes providing for review on appeal of interlocutory orders by the Court of Appeals, at and prior to the disposition of the cause, and said District Court is without lawful power to so dispose of the cause.

## FOURTEENTH.

That the said decrees unlawfully deprive the plaintiff of his constitutional right to invoke the jurisdiction of the District Court in the contro-



versy in this cause by the methods and processes provided by law whereby he is entitled to invoke and make the jurisdiction of the Court effective by such processes and means as will protect his property rights as well as his rights as a citizen of the United States to litigate said claim in this Court.

## FIFTEENTH.

In that in and by said decrees the Court refused to give the plaintiff the protective relief prayed by restraining order, injunction or Receiver, to protect and conserve the property in the district *pendente lite*, and to allow the controversy to proceed in due course of equity proceedings, and thereby the Court, in advance of the time and stage of the proceedings at which such rights of the parties could be lawfully adjudicated, deprived itself of jurisdiction to enforce plaintiff's rights as to the *res* in said controversy, and so deprived plaintiff of his constitutional right of due process of law.

770

Dated, New York, April 10th, 1920.

ERWIN, FRIED & CZAKI,

Solicitors for appellant,

Office and Post Office Address,

15 William Street,

New York City.

Service of copies of the foregoing assignments of error are admitted by Walter H. Merritt, Esq., and Messrs. Esselstyn & Haughwout, appearing specially April 10, 1920, and said assignments of error are marked filed United States District Court, Southern District of New York, April 10, 1920.

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**Deposit in Lieu of Bond for Costs on  
Appeal.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

---

HENRY S. DE REES,  
Plaintiff,

against

773

DAVID COSTAGUTA, MARCOS A.  
ALGIERS, ALEJANDRO SASSOLI,  
EUGENIO OTTOLENGHI, indi-  
vidually and as copartners in  
business composing the copart-  
nership of David Costaguta &  
Company, Renado Taffell and  
the American-European Trad-  
ing Corporation,  
Defendants.

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E 17-201

774

The plaintiff having appealed from the decrees of this Court entered on the 10th day of April, 1920, to the Supreme Court of the United States, presenting to the undersigned Judge a citation to be signed by him, now tenders to the Court the sum of \$250.00 to be deposited with the Clerk of the said District Court, subject to the orders of the Court, as security that the said appellant shall prosecute his appeal to effect, and if he shall fail to make his plea

*Certificate of Deposit.*

775

good, shall answer all costs, which may be awarded against him by reason of said appeal.

Dated, New York, April 10th, 1920.

ERWIN, FRIED & CZAKI,  
Solicitors for Pltff.

Approved:

LEARNED HAND,  
D. J.

April 10, 1920.

Received the \$250 mentioned above April 10, 1920.

776

ALEXANDER GILCHRIST,  
Clerk.

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Service of the foregoing certificate of deposit is admitted by Walter H. Merritt, Esq., and Messrs. Esselstyn & Haughwout April 10, 1920, appearing specially, and said certificate is marked filed United States District Court, Southern District of New York, April 10, 1920.

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778

**Citation.**

UNITED STATES OF AMERICA,

THE PRESIDENT OF THE UNITED STATES.

To :

David Costaguta, Marcos A. Algiers, Alejandro Sassoli, Eugenio Ottolenghi, individually and as copartners in business composing the copartnership of David Costaguta & Company, Renado Taffell and the American-European Trading Corporation.

779

## GREETING :

YOU ARE HEREBY CITED AND ADMONISHED to be and appear before the Supreme Court of the United States, to be holden at the Capitol, in the City of Washington, D. C., on the 8th day of May, 1920, pursuant to an order, allowing an appeal, filed in the office of the Clerk of the District Court of the United States for the Southern District of New York, wherein Henry S. De Rees is the plaintiff and appellant, and you are the appellees, and you are ordered to show cause, if any there be, why the decrees in said cause mentioned should not be corrected and speedy justice should not be done in that behalf.

780

GIVEN under my hand at the Borough of Manhattan, in the City of New York, Southern District of New York, this 10th day of April, in the year of our Lord One thousand nine hundred and twenty and of the Independence of

*Citation.*

781

the United States the one hundred and forty-fourth.

LEARNED HAND,  
*Judge of the District Court of the  
United States, for the Southern  
District of New York.*

Service of copies of foregoing citation is admitted by Walter H. Merritt, Esq., and Messrs. Esselstyn & Haughwout, April 10, 1920, appearing specially, and said citation is marked filed United States District Court, Southern District of New York, April 10, 1920.

782

783

784 **Order Granting Stay Pending Appeal.**

IN THE  
DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF NEW YORK.

HENRY S. DE REES,  
Plaintiff-Appellant,  
against

785 DAVID COSTAGUTA, MARCOS A.  
ALGIERS, ALEJANDRO SASSOLI,  
EUGENIO OTTOLENGHI, indi-  
vidually and as copartners in  
business composing the copart-  
nership of David Costaguta &  
Company, Renado Taffell and  
the American-European Trad-  
ing Corporation,  
Defendant-Appellees.

This cause having come on to be heard at a Term of this Court, and having been argued by counsel, due deliberation having been had thereon, it was

786 ORDERED, ADJUDGED AND DECREED that pending the appeal of the plaintiff herein already taken to the Supreme Court, the defendant American-European Trading Corporation shall not reduce its assets in the Southern District of New York below the sum of \$110,000.

It is a condition of this order that the plaintiff shall file a bond of \$2,000 conditioned to pay any

*Order Granting Stay.*

787

damages sustained by the aforesaid defendant, by reason of this order, with leave to defendant to move for an increase in the same after July 1st, 1920.

Dated, April 15, 1920.

LEARNED HAND,  
U. S. D. J.

The foregoing order is marked filed United States District Court, Southern District of New York, April 20, 1920, and annexed thereto are the following returns of the United States Marshal. 788

I CERTIFY that on the 16th day of April, 1920, at the City of New York, in my district, I personally served the within certified copy of order upon the within named defendant Renado Taffell, by exhibiting to him at No. 22 White Street, N. Y. City, the within certified copy and at the same time leaving with him a certified copy thereof.

THOMAS D. McCARTHY,  
United States Marshal,  
Southern District of New York. 789

Dated, April 20, 1920.

790

*Order Granting Stay.*

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I CERTIFY that on the 16th day of April, 1920, at the City of New York, in my district, I served the within certified copy of order upon the within named American-European Trading Corporation, by exhibiting to Renado Taffell, as Secretary and Treasurer of said corporation, at 22 White Street, N. Y. City, the within certified copy and at the same time leaving with him a certified copy thereof.

THOMAS D. McCARTHY,  
United States Marshal,  
Southern District of New York.

791

Dated, April 20, 1920.

792



**Bond on Stay Pending Appeal.**

793

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

HENRY S. DE REES,  
Plaintiff-Appellant,  
against

DAVID COSTAGUTA, MARCOS A.  
ALGIERS, ALEJANDRO SASSOLI,  
EUGENIO OTTOLENGHI, indi-  
vidually and as copartners in  
business composing the copart-  
nership of David Costaguta &  
Company, Renado Taffell and  
the American-European Trad-  
ing Corporation,  
Defendants-Appellees.

Equity 17-201

794

KNOW ALL MEN BY THESE PRESENTS, That Henry S. De Rees, the plaintiff above named, as Principal, and the National Surety Company of the City of New York, as Surety, are held and firmly bound in the penal sum of Two thousand Dollars (\$2,000.00), lawful money of the United States of America, unto Alexander Gilchrist, Clerk of the District Court of the United States for the Southern District of New York, his successor or successors, for which payment to be made the undersigned bind themselves, their heirs, executors, adminis-

795

*Bond.*

796

trators, successors and assigns, firmly by these Presents.

Sealed with our Seals and dated the 16th day of April, in the year One thousand nine hundred and twenty.

WHEREAS, heretofore and on the 10th day of April, 1920, final decrees were made and entered in the above-entitled action, among other things, dismissing the bill of complaint of the plaintiff herein as against all of the said defendants; and

797

WHEREAS, on said 10th day of April, 1920, the above-named plaintiff did duly appeal to the Supreme Court of the United States from said final decrees dismissing the said bill of complaint, among other things; and

WHEREAS, on the 15th day of April, 1920, an order was made and entered in said above-entitled action providing that, pending the appeal of the plaintiff, the defendant American-European Trading Corporation shall not reduce its assets in the Southern District of New York below the sum of \$110,000.00 and that, as a condition for said order, the plaintiff shall file a bond of \$2,000.00 conditioned to pay any damages sustained by said defendant American-European Trading Corporation by reason of said order;

798

NOW, THEREFORE, the condition of the above obligation is such that if the appeal from said decrees be dismissed by the plaintiff, or the said decrees be affirmed by the Supreme Court of the United States, the plaintiff will, on demand, pay to the defendant American-European Trading Corporation all legal damages accruing to it by reason of said order, then

the above obligation to be void, otherwise to remain in full force and virtue.

Signed, sealed and delivered  
in the presence of :

HENRY S. DE REES.

By

ARTHUR P. WEST,  
Vice-President.

Attest :

E. M. McCARTHY,  
Resident Vice-President.

(Seal)

COUNTY OF NEW YORK, ss. :

800

On this 16 day of April, 1920, before me personally appeared the within named Henry S. De Rees, to me known, and known to me to be the individual described in and who executed the within bond, and he acknowledged that he executed the same.

H. E. EMMETT,

Notary Public for Kings County, No. 18.

Certificate filed in New York County,

No. 36; Nassau; Bronx, No. 6;

Queens, No. 631; Richmond &

Westchester Counties.

Kings County Register's office, No.  
2012.

New York County Register's office,  
No. 2026.

Bronx County Register's office No.  
2218.

My commission expires March 30,  
1922.

801

## NATIONAL SURETY COMPANY

Capital \$4,000,000.00

AFFIDAVIT, ACKNOWLEDGMENT AND JUSTIFICATION  
BY GUARANTEE OR SURETY COMPANYSTATE OF NEW YORK, }  
COUNTY OF NEW YORK. } ss. :

803 On this 16th day of April, one thousand nine hundred and twenty, before me personally came Arthur P. West, known to me to be the Vice-President of the National Surety Company, the corporation described in and which executed the within and foregoing Bond of Henry S. De Rees, as a surety thereon, and who, being by me duly sworn, did depose and say that he resides in the City of New York, State of New York; that he is the Vice-President of said Company, and knows the corporate seal thereof; that the said National Surety Company is duly and legally incorporated under the laws of the State of New York; that said Company has complied with the provisions of the Act of Congress of August 13th, 1894; that the seal affixed to the within Bond of Henry S. De Rees, is the corporate seal of said National Surety Company, and was thereto affixed

804 by the order and authority of the Board of Directors of said Company; that he signed his name thereto by like order and authority as Vice-President of said Company; that he is acquainted with E. M. McCarthy and knows him to be the resident Assistant Secretary of said Company; that the signature of said E. M. McCarthy, subscribed

to said Bond is in the genuine handwriting of said E. M. McCarthy, and was thereto subscribed by order and authority of said Board of Directors; and in the presence of said deponent; that the assets of said Company, unencumbered and liable to execution, exceed its debts and liabilities of every nature whatsoever, by more than the sum of Eight Million (\$8,000,000) Dollars.

That.....is the agent to acknowledge service for said Company in the Judicial District wherein this bond is given.

ARTHUR P. WEST.

Sworn to, acknowledged before me, and subscribed in my presence this 16th day of April, 1920. 806

H. E. EMMETT,

(Seal) Notary Public for Kings County, No. 18.  
Certificate filed in New York County,  
No. 36; Nassau; Bronx No. 6;  
Queens No. 631; Richmond & West-  
chester Counties; Kings County  
Register's Office, No. 2012; New  
York Register's office, No. 2026;  
Bronx County Register's office,  
No. 2218.

My commission expires March 30,  
1922.

Approved as to form and sufficiency.

807

LEARNED HAND,

D. J.

Marked filed United States District Court, Southern District of New York, April 19, 1920.

**Stipulation.**

IT IS HEREBY STIPULATED AND AGREED that the foregoing is a true transcript of the record of the District Court in the above entitled matter, as agreed on by the parties, the same embracing the complete record of the proceedings in the said District Court, and proceedings therein for appeal to the United States Supreme Court, and the same may be certified as such by the Clerk of the said District Court.

Pursuant to Rule XI. of the United States Supreme Court, it is further AGREED that the translations into English of the Spanish contract, papers, accounts and documents in the foregoing transcript of record, are hereby admitted to be correct translations thereof.

Dated, April 27, 1920.

MARION ERWIN,  
FREDERICK M. CZAKI,

Solicitors for plaintiff-appellant.

ESSELSTYN & HAUGHWOUT,  
Solicitors for Taffell & American-  
European Trading Corporation,  
appellees, appearing specially.

WALTER H. MERRITT,  
Solicitor for Costaguta, Algiers,  
Sassoli, Ottolenghi & David Cos-  
taguta & Co., appellees, appear-  
ing specially.

## Clerk's Certificate.

811

UNITED STATES OF AMERICA, }  
SOUTHERN DISTRICT OF NEW YORK, } ss.:

HENRY S. DE REES,  
Plaintiff-Appellant,

vs.

DAVID COSTAGUTA *et als.*,  
Defendants-Appellees.

E 17-201

I, ALEXANDER GILCHRIST, JR., Clerk of the District Court of the United States for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the District Court in the above-entitled matter, the same embracing the complete record of the proceedings in the said District Court, and proceedings therein for appeal to the United States Supreme Court, as agreed upon by the parties.

812

IN TESTIMONY WHEREOF, I have caused the Seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 14<sup>TH</sup> day of May, in the year of our Lord one thousand nine hundred and twenty and of the Independence of the said United States the one hundred and forty-fourth.

813

ALEXANDER GILCHRIST, JR.,  
Clerk.